160 US 141

TRANSCRIPT OF RECORD.

160-149

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 48

BAMBERGER, BLOOM AND COMPANY, PLAINTIFFS IN ERROR,

vs.

W. W. SCHOOLFIELD AND H. G. MILLER, SURVIVING PARTNERS OF SCHOOLFIELD, HANAUER AND COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED SEPTEMBER 21, 1891.

(14,850)

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

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1 Pleas in the circuit court of the United States for the northern division of the northern district of Alabama, sitting at Huntsville.

Be it remembered that heretofore, to wit, on the 15th day of January, 1890, came Rosina Bloom, executrix of Nathan Bloom, deceased; Levi Bamberger, Jacob F. Bamberger, Julius Bamberger, and Levi Bloom, partners under the firm name of Bamberger, Bloom & Co., by their agent, Isaac Hartfield, and filed in said court their affidavit and sued out of said court a writ of attachment against Henry Warten, and the said affidavit is in words and figures as follows, to wit:

Affidavit.

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division.

Before me, A. W. McCullough, clerk of the circuit court of the United States for the northern district of Alabama, personally appeared Isaac Hartfield, who, being duly sworn, saith that he is the agent of Rosina Bloom, executrix of Nathan Bloom, deceased; Levi Bamberger, Jacob F. Bamberger, Julius Bamberger, and Levi Bloom, who are resident citizens of the State of Kentucky, except
2 said Jacob F. and Levi Bamberger, who are resident citizens of the State of New York, and all of whom are partners trading under the style of Bamberger, Bloom and Company; that Henry Warten, who is a resident citizen of Limestone county, Alabama, is justly indebted to Rosina Bloom, executrix of Nathan Bloom, deceased; Levi Bamberger, Jacob F. Bamberger, Julius Bamberger, and Levi Bloom, partners, trading under said firm name of Bamberger, Bloom and Company, in the sum of six thousand six hundred & forty-six & $\frac{77}{100}$ dollars, $1,219.25 whereof is now due, $500.00 whereof will be due February 1st, 1890, $500.00 whereof will be due February 15th, 1890, $500.00 whereof will be due March 1st, 1890, $500.00 whereof will be due March 15th, 1890, $1,142.52 will be due November 1st, 1890, $1,142.50 will be due November 15th, 1890, and $1,142.50 whereof will be due December 1st, 1890, with interest thereon, and that the said Henry Warten has fraudulently disposed of his property, and that an attachment is not sued out for the purpose of vexing or harrassing said Henry Warten.

(S'g'd) ISAAC HARTFIELD.

Sworn to and subscribed before me this 15th day of January, 1890.

(S'g'd) A. W. McCULLOUGH,
Clerk Circuit Court, Northern District of Alabama.

Endorsed: No. 1476. U. S. circuit court, northern district
3 of Alabama, northern division. Bamberger, Bloom & Co. *vs.* Henry Warten. Affidavit. Filed in clerk's office 15th day of January, 1890. (S'g'd) A. W. McCullough, clerk.

And afterwards, to wit, on the 15th day of January, 1891, a bond was filed in this cause in words and figures as follows, to wit:

Bond.

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division.

Know all men that we, Bamberger, Bloom and Company and S. Schiffman and Company and J. Klaus & Company, are held and firmly bound unto Henry Warten in the sum of thirteen thousand two hundred and ninety-three $\frac{54}{100}$ dollars, to be paid to the said Henry Warten, (his) certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 15th day of January, in the year of our Lord 1890.

The condition of this obligation is such that whereas the above-bounden Bamberger, Bloom & Company have this day prayed an attachment at the suit of themselves against the estate of
4 the above-named Henry Warten for the sum of six thousand six hundred and forty-six $\frac{77}{100}$ dollars, and hath obtained the same, returnable to the next term of the circuit court of the United States for the northern division of the northern district of Alabama:

Now, if the said Bamberger, Bloom & Company shall prosecute said attachment with effect and pay the defendant all such damages as he may sustain by the wrongful or vexatious suing out of such attachment, then the above obligation to be void; otherwise to remain in full force and effect.

(S'g'd)	BAMBERGER, BLOOM & CO., P'r ISAAC HARTFIELD, *Ag't.*	[SEAL.]
(S'g'd)	S. SCHIFFMAN & CO.	[SEAL.]
(S'g'd)	J. KLAUS & CO.	[SEAL.]

Approved this 15th day of January, 1890.

(S'g'd) A. W. McCULLOUGH, *Clerk.*

Endorsed: No. 1476. U. S. circuit court, northern district of Alabama, northern division. Bamberger, Bloom & Co. *vs.* Henry Warten. Bond. Filed in clerk's office this 15th day of Jan'y, 1890. (S'g'd) A. W. McCullough, clerk.

And afterwards, to wit, on the 15th day of January, 1890, a writ of attachment was issued out of and under the seal of the said circuit court in words and figures as follows, to wit:

5 *Attachment.*

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division.

The President of the United States of America to the marshal for the northern district of Alabama, Greeting:

Whereas Isaac Hartfield, as agent of Rosina Bloom, executrix of Nathan Bloom, deceased; Levi Bamberger, Jacob F. Bamberger, Julius Bamberger, and Levi Bloom, partners, trading together under the firm name and style of Bamberger, Bloom & Company, hath complained on oath to me, A. W. McCullough, clerk of the circuit court of the United States for the northern district of Alabama, that Henry Warten (is) justly indebted to said Rosina Bloom, executrix as aforesaid; Levi Bamberger, Jacob F. Bamberger, Julius Bamberger, and Levi Bloom, partners, trading under the firm name and style of Bamberger, Bloom & Company, in the sum of six thousand six hundred and forty-six $\frac{77}{100}$ dollars, due and falling due as stated in said affidavit, having made affidavit and given bond as required by law in such case, you are hereby commanded to attach so much of the estate of said Henry Warten as will be of value to satisfy the said debt and costs according to the complaint, and such estate, unless replevied, so to secure that the same may be liable to
6 further proceedings thereon to be had at the next term of the circuit court of the United States for said district, to be held at the court-house thereof, in the city of Huntsville, when and where you must make known how you have executed this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2nd Monday of October, in the year of our Lord one thousand eight hundred and eighty-nine.

Seal of U. S. Circuit Court.

Issued the 15th day of January, in the year of our Lord one thousand eight hundred and ninety.

(S'g'd) A. W. McCULLOUGH,
Clerk Circuit Court, Northern District of Alabama.

Marshal's Return.

Endorsed.

Received in the marshal's office Jan'y 15, 1890.
(S'g'd) C. C. AUSTIN, *U. S. Mar.*

Executed Jan'y 16th, 1890, at 12.15 p. m. by levying this writ on the stock of goods of every description in the storehouse in Athens, Alabama, recently occupied by Henry Warten and known as his storehouse, and have taken the same into my possession and have given written notice of this levy and seizure to said Henry Warten this 16th day of January, 1890.

(S'g'd) C. C. AUSTIN,
U. S. Marshal,
By R. C. BETTS, *Deputy.*

And afterwards Schoolfield, Hanauer & Co. claimed that
7 the above-levied goods were their property, and, having made affidavit as required by law and given bond with Napoleon Hill and Enoch Ensley as sureties thereon, the same was approved by the marshal and the property delivered to Schoolfield, Hanauer & Co. January 20th, 1890.

(S'g'd) C. C. AUSTIN,
U. S. Marshal,
By R. C. BETTS, *Deputy.*

Endorsed: No. 1476. U. S. circuit court, northern district of Alabama, northern division. Bamberger, Bloom & Co. *vs.* Henry Warten. Attachment. Issued January 15th, 1890. Returned and filed 21st day of January, 1890. (S'g'd) A. W. McCullough, clerk.

And afterwards, to wit, on the 21st day of January, 1890, an affidavit was filed in this cause in the words and figures following, to wit:

Affidavit of Claimants.

STATE OF ALABAMA, }
Limestone County. }

Before me, Robert C. Betts, deputy U. S. marshal, personally appeared Henry G. Miller, a member of the firm of Schoolfield, Hanauer & Co., who, being duly sworn, deposeth and sayeth that the following-described property, to wit, the stock of goods in the store-
house recently occupied by Henry Warten on the east side
8 of the public square in the town of Athens, Alabama, upon which an attachment from the circuit court of the United States in and for the northern division of the northern district of Alabama issued the 15th day of January, 1890, in favor of Bamberger, Bloom & Co. against Henry Warten, for the sum of six thousand six hundred and forty-six $\frac{77}{100}$ dollars, has been levied by C. C. Austin, United States marshal for the northern district of Alabama, by Rob't C. Betts, deputy, to satisfy the same, is not the property of said Henry Warten, but is the property of Schoolfield, Hanauer & Co., and that they have a just claim to the property levied on.

(S'g'd) SCHOOLFIELD, HANAUER & CO.
HENRY G. MILLER.

Sworn to and subscribed before me this 20th day of January, 1890.

(S'g'd) ROB'T C. BETTS,
Deputy U. S. Marshal.

Endorsed: No. 1476. U. S. circuit court, northern district of Alabama, northern division. Bamberger, Bloom & Co. *vs.* Henry Warten. Affidavit of Henry G. Miller, of firm of Schoolfield, Hanauer & Co. Filed in clerk's office Jan'y 21st, 1890. (S'g'd) A. W. McCullough, clerk.

9 And afterwards, to wit, on the 21st day of January, a replevy bond was filed in this cause in words and figures as follows, to wit:

Replevy Bond.

Know all men by these presents that we, Schoolfield, Hanauer & Co. and Napolion Hill and Enoch Ensley, sureties, are held and firmly bound unto Bamberger, Bloom & Co. in the sum of thirteen thousand two hundred and ninety-three dollars; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this January 18, 1890.

The condition of the above obligation is such that whereas an attachment issued from the circuit court of the United States for the northern division of the northern district of Alabama on January 15th, 1890, in favor of Bamberger, Bloom & Co. against Henry Warten, of Athens, Alabama, for the sum of $6,646.77, and has been levied by the United States marshal for the northern district of Alabama upon all the goods, wares, and merchandise of Henry Warten in the storehouse lately occupied by him, Henry Warten, on the east side of the public square in the town of Athens,
10 Alabama, found; and whereas the said Schoolfield, Hanauer & Co. have made affidavit that they have a just claim to said property, and upon entering into this bond with sufficient security as required by law have obtained possession of said property:

Now, if the said Schoolfield, Hanauer & Co. shall have the said property forthcoming for the satisfaction of the judgment, if it be found liable therefor, and pay such costs and damages as may be recovered for putting in the said claim for delay, then this obligation to be void; otherwise to remain in full force and effect.

(S'g'd) SCHOOLFIELD, HANAUER & CO., [SEAL.]
(S'g'd) By W. W. SCHOOLFIELD.
(S'g'd) NAPOLEON HILL. [SEAL.]
(S'g'd) ENOCH ENSLEY. [SEAL.]

E. Ensley makes oath that he is the owner in his own name and right of property, real and personal, subject to execution, situated in the State of Alabama, worth the penalty of the above bond.

(S'g'd) ENOCH ENSLEY.

Sub. and sworn to before me this Jan'y 18, 1890.

[NOTARIAL SEAL.] (S'g'd) F. P. POSTON,
Notary Public.

Napoleon Hill makes oath that he is the owner in his own name and right of property, real and personal, subject to execution, situated in the State of Alabama, worth the penalty of the above bond.

(S'g'd) NAPOLEON HILL.

11 Sub. and sworn to before me Jan'y 18th, 1890.
(S'g'd) F. P. POSTON,
[NOTARIAL SEAL.] *Notary Public.*

STATE OF TENNESSEE, }
Shelby County. }

Personally appeared before me, the undersigned, notary public in and for said county, duly commissioned and acting, Schoolfield, Hanauer & Co., p'r W. W. Schoolfield and Napoleon Hill and Enoch Ensley, the within signers and bargainors, with each of whom I am personally acquainted, and who acknowledged that they executed the foregoing bond for the purposes therein contained.

I further certify that said sureties on said bond are personally well known to me and perfectly good and solvent for the penalty thereof.

Witness my hand and official seal at Memphis this 18th day of January, 1890.

[NOTARIAL SEAL.] (S'g'd) F. P. POSTON,
Notary Public.

Taken and approved this 20th day of Jan'y, 1890.
(S'g'd) R. C. BETTS,
Dep. U. S. Mar.

Endorsed: No. 1476. U. S. circuit court, northern district of Alabama, northern division. Bamberger, Bloom & Co. *vs.* Henry Warten. Replevy bond of Schoolfield, Hanauer & Co., Cincinnati. Filed in clerk's office Jan'y 21, 1890. (S'g'd) A. W. McCullough, clerk.

12 And afterwards, to wit, on the 15th day of April, 1890, an answer and replication was filed in said court and in said cause in words and figures as follows, to wit:

Answer.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

BAMBERGER, BLOOM & Co., a Firm Composed of Rosina Bloom, Executrix of Nathan Bloom, Dec'd; JacobF. Bamberger, Levi Bamberger, Julius Bamberger, and Levi Bloom, Plaintiffs,
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & Co., Claimants.

Come the plaintiffs, Bamberger, Bloom & Co., and allege that the property upon which the writ of attachment in this cause was levied and which is claimed by said Schoolfield, Hanauer & Co. was the property of said Henry Warten, the defendant in attachment, at the

time of its seizure under the writ of attachment in this suit, and is liable to the satisfaction of said attachment.

(S'g'd) HUMES, WALKER & SHEFFEY,
(S'g'd) W. T. SAUNDERS,
Attorneys for Plaintiff.

Replication.

The claimants deny that the property levied on is or was the property of the defendant, Henry Warten.

(S'g'd) R. A. McCLELLAN,
(S'g'd) R. C. BRICKELL,
Attorneys for Claimants.

13 Endorsed: No. 1476. Bamberger, Bloom & Co. *vs.* Henry Warten, def't; Schoolfield, Hanauer & Co., claimants. Issue for trial of right of property. Filed in clerk's office this 15th day of April, A. D. 1890. (S'g'd) A. W. McCullough, clerk.

And afterwards, to wit, on the 28th day of April, it being a day of a regular term of the circuit court of the United States of America for the northern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Huntsville, in said district, on the first Monday of April (it being the seventh day thereof), in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fourteenth year—present, the Hon. John Bruce, judge of the district courts of the United States for the middle and northern districts of Alabama, presiding; Alexander R. Nininger, marshal, and A. W. McCullough, clerk—an order was had and entered of record in said court and in said cause in words and figures as follows, to wit:

Order Continuing Cause.

BAMBERGER, BLOOM & CO.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & CO., Claimants. } No. 1476.

14 Come the parties, by their attorneys, and, on motion, it is ordered by the court that this cause be, and the same is hereby, continued.

15 And afterwards, to wit, on the 23d day of October, it being a day of a regular term of the circuit court of the United States of America for the northern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Huntsville, in said district, on the second Monday of October (it being the thirteenth day thereof), in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fifteenth year—pres-

ent, the Hon. John Bruce, judge of the district courts of the United States for the middle and northern districts of Alabama, presiding; the clerk, and marshal—the following proceeding was had and entered of record in said court and in said cause, to wit:

Jury Trial.

BAMBERGER, BLOOM & CO.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & Co., Claimants. } No. 1476.

Come the parties, by their attorneys; come also a jury of good and lawful men, to wit, S. F. Sweinhart and eleven others, who are duly elected, empanelled, and sworn herein to well and truly try the issues joined and a true verdict render according to the
16 evidence, and the trial of this cause proceeds.

During the examination of witnesses, the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until tomorrow morning at 9.30 o'clock.

Trial Continued.

And afterwards, to wit, on the 24th day of October, 1890, the same being a day of a regular term of said United States circuit court—present, the Hon. John Bruce, district judge—further proceedings were had and entered of record in said court and in said cause as follows, to wit:

BAMBERGER, BLOOM & CO.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUR & Co., Claimants. } No. 1476.

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury who were duly elected, empanelled, and sworn herein as aforesaid, and the trial of this cause proceeds.

During the examination of witnesses, the usual hour for adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until tomorrow morning at 9.30 o'clock.

17 *Trial Continued.*

And afterwards, to wit, on the 25th day of October, 1890, the same being a day of a regular term of said United States circuit court, the Hon. John Bruce, district judge, presiding, further proceedings were had and entered of record in said court and in said cause as follows, to wit:

BAMBERGER, BLOOM & CO.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUR & Co., Claimants. } No. 1476.

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury who were duly elected, empanelled, and sworn herein as aforesaid, and the trial of this cause proceeds. During the examination of witnesses, the usual hour for adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until Monday morning, October 27th, A. D. 1890, at 10 o'clock a. m.

Trial Continued.

And afterwards, to wit, on the 27th day of October, 1890, the same being a day of a regular term of said United States
18 circuit court, the Hon. John Bruce, district judge, presiding, further proceedings were had and entered of record in said court and in said cause as follows, to wit:

BAMBERGER, BLOOM & CO.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & Co., Claimants. } No. 1476.

This being the day and hour to which the further trial of this cause was on Saturday continued, came again the parties, by their attorneys; come again the jury who were duly elected, empanelled, and sworn herein as aforesaid, and the trial of this cause proceeds. During the examination of witnesses, the usual hour for adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until tomorrow morning at 9.30 o'clock.

Trial Continued.

And afterwards, to wit, on the 28th day of October, 1890, the same being a day of a regular term of said United States circuit court, the Hon. John Bruce, district judge, presiding, further proceedings were had and entered of record in said court and in said cause as follows, to wit:

19 BAMBERGER, BLOOM & CO.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & Co., Claimants. } No. 1476.

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury who were duly elected, empanelled,

and sworn herein as aforesaid, and the trial of this cause proceeds. During the examination of witnesses, the usual hour for adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until tomorrow morning at 9.30 o'clock.

Trial Continued.

And afterwards, to wit, on the 29th day of October, 1890, the same being a day of a regular term of said United States circuit court, the Hon. John Bruce, district judge, presiding, further proceedings were had and entered of record in said court and in said cause as follows, to wit:

BAMBERGER, BLOOM & CO.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUR & CO., Complainants. } No. 1476.

This being the day and hour to which the further trial of
20 this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury who were duly elected, empanelled, and sworn herein as aforesaid, and the trial of this cause proceeds.

During the examination of witnesses, the usual hour for adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until tomorrow morning at 9.30 o'clock.

Trial Continued.

And afterwards, to wit, on the 30th day of October, 1890, the same being a day of a regular term of said United States circuit court, the Hon. John Bruce, district judge, presiding, further proceedings were had and entered of record in said court and in said cause as follows, to wit:

BAMBERGER, BLOOM & CO.
vs.
HENRY WARTEN, Defendants; SCHOOLFIELD, HANAUER & CO., Claimants. } No. 1476.

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury who were duly elected, empanelled, and sworn herein, and the trial of this cause proceeds.

During the examination of witnesses, the usual hour for
21 adjournment having arrived—

It is ordered by the court that the further trial of this cause be continued until tomorrow morning at 9.30 o'clock.

Trial Continued.

And afterwards, to wit, on the 31st day of October, 1890, the same being a day of a regular term of said United States circuit court, the Hon. John Bruce, district judge, presiding, further proceedings were had and entered of record in said court and in said cause as follows, to wit:

BAMBERGER, BLOOM & CO.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & Co., Claimants. } No. 1476.

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury who were duly elected, empanelled, and sworn herein, and the trial of this cause proceeds. During the argument of counsel, the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until tomorrow morning at 9 o'clock.

Trial Concluded. Finding for Claimants.

22 And afterwards, to wit, on the 1st day of November, 1890, the same being a day of a regular term of said United States circuit court, the Hon. John Bruce, district judge, presiding, further proceedings were had and entered of record in said court and in said cause as follows, to wit:

BAMBERGER, BLOOM & CO.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & Co., Claimants. } No. 1467.

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury who were duly elected, empanelled, and sworn herein as aforesaid, and the trial of this cause proceeds.

Having heard the evidence by the parties adduced, arguments of counsel, and charge of the court, the jury retire to their room to consider of their verdict and afterwards return into court and render their verdict in writing, signed by their foreman, and upon their oath do say, "We, the jury, find for the claimants. S. F. Sweinhart, foreman."

It is, therefore, considered by the court that judgment be rendered in favor of said claimants, and that they go hence without day, and that the plaintiffs pay the costs of this suit, for which let execution issue.

23 And afterwards, to wit, on the 1st day of November, 1890, aforesaid, an agreement was filed in this cause in words and figures as follows, to wit:

Agreement Filing Bill of Exceptions.

BAMBERGER, BLOOM & Co., Pl'ffs,
vs.
HENRY WARTEN, Def't; SCHOOLFIELD, HANAUER & Co., Claimants. } No. 1476.

The plaintiffs having prayed an appeal to the Supreme Court of the United States in this case, it is agreed they have thirty days in which to prepare their bill of exception, and that the same may be then signed as in term time. This agreement made in open court this November 1st, 1890.

(S'g'd) HUMES, WALKER & SHEFFEY,
(S'g'd) THOMAS SANDERS, AND
D. D. SHELBY, *Att'ys for Pl'ffs.*
(S'g'd) McCLELLAN, POSTON & COOPER,
Attorneys for Claimants.

If original papers are not found it is agreed that they may be substituted.

(S'g'd) McCLELLAN, POSTON & COOPER,
Attorneys for Claimants.

Endorsed: No. 1476. Bamberger, Bloom & Co. *vs.* Henry Warten; Schoolfield, Hanauer & Co., claimants. Agreement as to bill of exceptions. Filed Nov. 1, 1890. A. W. McCullough, clerk.

24 *Order Granting Time to File Bill of Exceptions.*

And afterwards, to wit, on the 1st day of November, 1890, aforesaid, further proceedings were had and entered of record in said court and in said cause as follows, to wit:

BAMBERGER, BLOOM & Co.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & Co., Claimants. } No. 1476.

Come the parties, by their attorneys, and, on motion, it is ordered by the court that the plaintiffs have thirty days from this date within which to prepare a bill of exceptions, and that the same may be then signed as of term time.

Motion for New Trial.

And afterwards, to wit, on the 1st day of November, 1890, aforesaid, a motion for a new trial was presented to the court and an order was made continuing same and entered of record in said court; the said motion for a new trial and the order continuing being in the words and figures following, to wit:

25 BAMBERGER, BLOOM & Co.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & Co., Claimants. } No. 1476.

Comes the plaintiffs in the above-entitled cause and move the court to set aside the verdict of the jury rendered in said cause and grant a new trial, and for grounds of said motion set down the following, viz:

1. The verdict of the jury is contrary to law.
2. The verdict of the jury is contrary to the evidence.
3. Upon the ground of newly discovered evidence.

(S'g'd) HUMES, WALKER & SHEFFEY,
D. D. SHELBY, AND
W. T. SANDERS,
Attorneys for Plaintiff-.

To Messrs. McClellan, Poston and Cooper, attorneys for claimants.

Order Continuing Motion for New Trial.

BAMBERGER, BLOOM & Co.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & Co., Claimants. } No. 1476.

Come the parties, by their attorneys, and plaintiffs' counsel move the court to set aside the verdict of the jury rendered in
26 this cause and grant a new trial, and, upon consideration by the court, it is ordered by the court that the motion for a new trial be continued.

Motion for New Trial Withdrawn.

And afterwards, to wit, on the 11th day of November, 1890, the motion for a new trial was withdrawn by plaintiff's attorneys, and the same is entered of record in the said circuit court in words and figures as follows, to wit:

BAMBERGER, BLOOM & Co.
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & Co., Claimants, } No. 1476.

Come the plaintiffs in the above-entitled cause and hereby dismiss the motion made by them for a new trial on Nov. 1, 1890.

Nov. 11, 1890.

(S'g'd) HUMES, WALKER & SHEFFEY,
D. D. SHELBY, AND
W. T. SANDERS, *For Pl'ffs.*

27 And afterwards, to wit, on the 11th day of November, 1890, came the plaintiffs, by their attorneys, and filed in said court and in said cause their bond, and sued out of said court a writ of error to the Supreme Court of the United States.

And said bond is in words and figures as follows, to wit:

Appeal Bond.

Circuit Court of the United States of America for the Northern Division of the Northern District of Alabama.

BAMBERGER, BLOOM & Co., Appellants,
vs.
SCHOOLFIELD, HANAUER & Co., Respondents.

Know all men by these presents that we, Bamberger, Bloom & Company, of Louisville, Kentucky, and Soloman Schiffman and J. Klaus, of Huntsville, Alabama, are held and firmly bound unto the above-named Schoolfield, Hanauer & Company in the sum of one thousand dollars; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 7th day of November, in the year of our Lord one thousand eight hundred and ninety.

Whereas the above-named Bamberger, Bloom & Company have prosecuted a writ of error to the Supreme Court of the United
28 States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the northern division of the northern district of Alabama:

Now, therefore, the condition of this obligation is such that if the above-named Bamberger, Bloom & Company shall prosecute said writ of error to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(S'g'd) BAMBERGER, BLOOM & CO.,
By MILTON HUMES, *Att'y-in-fact.*
(S'g'd) SOLOMAN SCHIFFMAN.
(S'g'd) J. KLAUS.

Sealed and delivered and taken and acknowledged this 7th day of November, 1890, before me—

——— ———.

Approved by—
JOHN BRUCE, *Judge.*

I think that the securities upon the above bond are good and sufficient.

Nov. 7, '90.
(S'g'd) A. W. McCULLOUGH,
Clerk U. S. Circuit Court.

Endorsed: No. 1476. Bamberger, Bloom & Co. *vs.* Henry Warten; Schoolfield, Hanauer & Co., claimants. Appeal bond. Filed in clerk's office Nov. 11th, 1890. (S'g'd) A. W. McCullough, clerk.

29 And the said writ of error is next hereto attached, to wit:

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern division of the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Bamberger, Bloom & Company, plaintiffs, and Schoolfield, Hanauer & Company, claimants, a manifest error has happened, to the great damage of the said plaintiffs, Bamberger, Bloom & Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record
30 and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, the 10th day of Nov., in the year of our Lord one thousand eight hundred and ninety.

Seal U. S. Circuit Court.

(S'g'd) A. W. McCULLOUGH,
Clerk U. S. Circuit Court, Nor. Div., Nor. Dist., Ala.

Allowed by—
(S'g'd) JOHN BRUCE, *Judge.*

Certificate.

I hereby certify that a copy of this original writ of error was, on this 11th day of November, A. D. 1890, filed in my office for the benefit of Schoolfield, Hanauer & Co., appellees in this cause.

(S'g'd) A. W. McCULLOUGH,
Clerk U. S. Circuit Court, Nor. Div., Nor. Dist., Ala.

Endorsed: No. 1476. Bamberger, Bloom & Co. *vs.* Henry Warten; Schoolfield, Hanauer & Co., claimants. Writ of error, original. Filed in clerk's office Nov. 11, 1890. S'g'd A. W. McCullough, clerk.

And thereupon a citation was issued, duly served upon the said claimants, and returned and filed in said court and in said cause, and said citation is next hereto attached, to wit:

31 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To W. W. Schoolfield and H. G. Miller, surviving partners of the firm of Schoolfield, Hanauer & Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and ninety-one, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Alabama, wherein Bamberger, Bloom & Company are appellants and Schoolfield, Hanauer & Co. are respondents, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of November, in the year of our Lord one thousand eight hundred and ninety.

(S'g'd) JOHN BRUCE, *Judge.*

Endorsed: No. 1467. Bamberger, Bloom & Co. *vs.* Henry Warten, Schoolfield, Hanauer & Co., claimants. Citation. Filed in clerk's office Nov. 11th, 1890. (S'gd) A. W. McCullough, clerk.

Marshal's Return.

Endorsed: Received in office Nov. 11, 1890. S'g'd A. R. Nininger, United States marshal.

32 On this 11th day of November, in the year of our Lord one thousand eight hundred and ninety, personally appeared before the subscriber, Robert Barber, a deputy United States marshal, and makes oath that he delivered a true copy of the within citation to Lawrence Cooper, Esq., attorney for defendants and claimants, this 11th day of November, A. D. 1890.

(S'g'd) ROBERT BARBER,
Deputy U. S. Marshal, Northern District of Ala.

Sworn to and subscribed before me this 11th day of Nov., 1890.

[Seal of U. S. Circuit Court.]

(S'g'd) A. W. McCULLOUGH,
Clerk U. S. Cir. Court.

And afterwards, to wit, on the 26th day of November, an agreement to an extension of time in which to file bill of exceptions was filed in words and figures as follows, to wit:

Agreement to Extension of Time.

HUNTSVILLE, ALA., *Nov.* 24, 1890.

R. A. McClellan, Esq., Athens, Ala.

DEAR SIR: Please agree to an extension of 30 days of the time for completing and signing bill of exceptions in case of Bamberger, Bloom & Co. *vs.* Henry Warten, defendant, Schoolfield Hanauer & Co., claimants.

Your prompt reply will oblige yours truly,

(S'g'd) HUMES, WALKER & SHEFFEY.

33 I consent to the extension asked above.

Nov. 24, 1890.

(S'g'd) R. A. McCLELLAN,
For Clm'ts.

Endorsed: No. 1476. Bamberger, Bloom & Co. *vs.* Henry Warten; Schoolfield, Hanauer & Co., claimants. Agreement of attorneys to extension of time for filing bill of exceptions. Filed Nov. 26, 1890. (S'g'd) N. W. Trimble, clerk U. S. cir. court.

34 *Bill of Exceptions.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

BAMBERGER, BLOOM & COMPANY, Plaintiffs,
vs.
HENRY WARTEN, Defendant; SCHOOLFIELD, HANAUER & COMPANY, Claimants.

Be it remembered that at the October term, 1890, of the said court the following proceedings were had on the trial of the issue joined in the pleadings between the said plaintiff- and the said claimants, to wit:

The plaintiffs introduced CHARLES GOLDSMITH, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. Do you know the plaintiff- in this case, Bamberger, Bloom & Company?

A. Yes, sir.

Q. Do you know Henry Warten, the original defendant?

A. I do.

Q. Are you connected with Bamberger, Bloom & Co.? If so, how?

A. I am their agent.

Q. Does the defendant Henry Warten owe the plaintiff- anything? If so, how much, and when was the debt created?

A. Henry Warten is indebted to the firm of Bamberger, Bloom & Co. in the sum of $6,644.01.

35 Q. When was that debt created?

A. The first transaction in this indebtedness was made January 7, 1889. The amount due Bamberger, Bloom & Company consists of a number of purchases scattered along through January, February, etc., till Jan'y 1st, 1890.

Q. Have you an itemized statement showing when each item was incurred?

A. Yes, sir; but it is not a statement made out so that others can understand it. It is merely for reference.

Q. Does this show what amount of indebtedness was incurred each month?

A. Yes; and certain days of each month. This shows every transaction had with him from Jan'y 1, 1889, on.

Q. What was this indebtedness for?

A. Dry goods, notions, and other goods which Bamberger, Bloom & Company kept for sale, purchased from them by Henry Warten.

Q. Where were Bamberger, Bloom & Co. engaged in business then?

A. In the city of Louisville, Kentucky.

Q. In what business were they engaged?

A. In what is commonly known as the wholesale dry-goods business.

Q. These goods were sold to Warten in the course of their business as a customer of theirs?

A. Yes, sir.

Q. Where was Warten living and doing business then?

A. At Athens, Alabama.

Q. And these goods were purchased from Bamberger, Bloom & Co. by him as a merchant and shipped by them to him?

A. Yes, sir.

36 Q. And that account shows the date each item was purchased?

A. Yes, sir.

Q. All of this indebtedness was incurred in 1889?

A. Yes, sir.

Q. Has any portion of it ever been paid?

A. No, sir.

Q. Did Mr. Warten ever give any notes or other evidences of debt for the whole or any part of that indebtedness?

A. On the 12th day of August, 1889, Mr. Warten was owing our firm, for purchases from January, 1889, to that date (excepting one small bill Aug. 6th, 25 cents), $4,719.36, and for this amount he sent us at that time a note dated August 6th, 1889.

Q. What became of that note?

A. On the 30th of December, 1889, after having made a number of other purchases from Bamberger, Bloom & Company, and certain charges having been made for interest, a settlement was made with him for the entire amount of purchases made, including August, and the amount of this note, $4,719.36, together with protest fees.

Notes were taken from Warten for the greater part of that, all but $216.49, and the note for $4,719.36 was delivered to Mr. Warten. That transaction occurred Dec. 30th, 1889.

Q. Have you got the notes that were given by Warten when that transaction was made?

A. Yes, sir. (Produces them.)

Plaintiffs offer in evidence in connection with the testimony of this witness these eight notes, as follows:

"$1,000.00. LOUISVILLE, KY., *Dec. 30th*, 1889.

On January 15th, 1890, after date pay to the order of ourselves one thousand dollars, value received, negotiable and payable with current rate of exchange at B'k Athens, Athens, Ala.

37

BAMBERGER, BLOOM & CO.

To Henry Warten, Athens, Ala."

"$500.00. LOUISVILLE, KY., *Dec.* 30, 1889.

On February 1st, 1890, after date pay to the order of ourselves five hundred dollars, value received, negotiable and payable with current rate of exchange at B'k Athens, Athens, Ala.

BAMBERGER, BLOOM & CO.

To Henry Warten, Athens, Ala."

"$500.00. LOUISVILLE, KY., *Dec.* 30, 1889.

On February 15th, 1890, after date pay to the order of ourselves five hundred dollars, value received, negotiable and payable with current rate of exchange at B'k Athens, Athens, Ala.

BAMBERGER, BLOOM & CO.

To Henry Warten, Athens, Ala."

"$500.00. LOUISVILLE, KY., *Dec.* 30, 1889.

On March 1, 1890, after date pay to the order of ourselves five hundred dollars, value received, negotiable and payable with current rate of exchange at B'k Athens, Athens, Ala.

BAMBERGER, BLOOM & CO.

To Henry Warten, Athens, Ala."

"$500.00. LOUISVILLE, KY., *Dec.* 30, 1889.

One March 15th, 1890, after date pay to the order of ourselves five hundred dollars, value received, negotiable and payable with current rate of exchange at B'k of Athens, Athens, Ala.

38

BAMBERGER, BLOOM & CO.

To Henry Warten, Athens, Ala."

"$1,142.52. LOUISVILLE, KY., *Dec.* 30, 1889.

On November 1st, '90, after date pay to the order of ourselves eleven hundred and forty-two and $\frac{52}{100}$ dollars, value received, negotiable and payable with current rate of exchange at B'k of Athens, Athens, Ala.

BAMBERGER, BLOOM & CO.

To Henry Warten, Athens, Ala."

"$1,142.50. LOUISVILLE, KY., *Dec.* 30, 1889.

On November 15th, 1890, after date pay to the order of ourselves eleven hundred and forty-two and $\frac{50}{100}$ dollars, value received, negotiable and payable with current rate of exchange at B'k of Athens, Athens, Ala.

BAMBERGER, BLOOM & CO.

To Henry Warten, Athens, Ala."

"$1,142.50. LOUISVILLE, KY., *Dec.* 30, 1889.

On December 1st, 1890, after date pay to the order of ourselves eleven hundred and forty-two and $\frac{50}{100}$ dollars, value received, negotiable and payable with current rate of exchange at B'k of Athens, Athens, Ala.

BAMBERGER, BLOOM & CO.

To Henry Warten, Athens, Ala."

Each of these is endorsed: "Accepted. Henry Warten."

Q. And you say, Mr. Goldsmith, that the note he gave in August was returned to him?

A. Yes, sir.

39 The plaintiffs then introduced J. D. MARKHAM, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. Where do you live?

A. In Athens, Ala.

Q. In what business were you engaged during the year 1889?

A. I was employed in the mercantile house of Henry Warten, at Athens, Ala.

Q. How long did you continue as clerk in that house for Henry Warten after the year 1889—during the year 1890?

A. Until the night of Saturday, January 11th, 1890, or, so far as I know, until the morning of the 13th.

Q. Do you remember the day of the week the 13th day of January came on?

A. Yes, sir; it was on Monday.

Q. When did you cease to be clerk?

A. It was on Monday, January 13th, before breakfast.

Q. When were you first notified that you were no longer employed?

A. It was on Monday, January 13th, 1890, before breakfast.

Q. How late on Saturday evening were you at the store?

A. I think it was about half past eight.

Q. Up to Saturday evening you were in the store as a clerk for Henry Warten, and you had been in his employ during the year 1889?

A. Yes, sir; for three or four years.

40 Q. Was Warten claiming to be the owner of those goods during the time you were there?

A. Yes, sir; it was his establishment.

Q. I understood you to say that up to the time you ceased to be clerk there Warten was there in possession and claiming to be owner of the goods, and that you ceased to be clerk for him on the morning of the 13th of January, 1890?

A. Yes, sir.

Q. Was there an inventory taken of that stock of goods during the latter part of 1889 or the early part of 1890?

A. Yes, sir.

Q. Did you assist in taking it?

A. Yes, sir.

Q. How many days elapsed between the finishing of the inventory and the 13th day of January?

A. I think the inventory was taken about the first week of January.

Q. What was done with it?

A. I suppose Warten has it in his office, in the safe.

Q. Was it recorded?

A. Yes, sir.

Q. How?

A. The different clerks took different parts on foolscap paper and it was then transcribed into another book.

Q. From your knowledge of that stock of goods, having been a clerk in the house and having assisted in taking the inventory, what would you say was the value of it at the time of the levy of this attachment, on the 15th day of January, 1890?

A. I couldn't say as to the value of the goods then; I could tell the amount of the inventory when taken. I think the inventory amounted to between $9,500 and $10,000.

41 Q. How much would you say had been sold between the time the inventory was taken and between the time of the levy of the attachment?

A. I should say four or five hundred dollars. Generally there is not much sold in that month.

Q. In taking the inventory how were the goods valued?

A. Do you mean whether they were taken up at a reasonable rate or not?

Q. No; I mean as regards their original cost.

A. Some of the goods were taken above cost and others not so high. Most every merchant, in taking an inventory, has a certain lot of goods that are worth less after Christmas. Heavy goods are

not worth so much after Christmas as before. We took the inventory to the best of our capacity.

Q. Then an inventory, when taken after the 1st of January, is taken with reference to its merchantible value?

A. Yes, sir.

Q. And your recollection is that the inventory footed up $9,500 to $10,000?

A. Yes, sir.

Q. And your judgment is that between the time the inventory was finished and the levy of the attachment between three and four hundred dollars' worth of goods were sold?

A. Yes, sir.

Q. Was that stock of goods that you all took an inventory of the same stock that was levied on by the marshal?

A. Yes, sir.

Cross-examination by R. A. McClellan, Esq.:

42 Q. I believe you stated you were clerk for Henry Warten up to Monday morning?

A. Yes, sir.

Q. Who took possession of this stock of goods on Monday, January 13th, 1890?

A. Some time during the day Mr. Miller took possession.

Q. Who is he?

A. Mr. H. G. Miller, one of the firm of Schoolfield, Hanauer & Company.

Q. Did he or not hold possession of that stock until they were taken possession of by the deputy marshal?

A. Yes, sir.

Q. How many days after was that?

A. I think the marshal attached the goods on Wednesday or Thursday following.

Q. Who was in possession of that stock of goods when the United States marshal made the levy?

A. Mr. Miller.

Q. And Henry Warten, the defendant, was not in possession of that stock at the time it was seized by the marshal?

A. Not that I know of.

Q. Is it not a fact that he was at home dangerously sick for a day or so after that time?

A. Yes, sir; but whether he was sick that day or not I don't remember; he was sick for several days.

Q. You knew Henry Warten was not in possession there?

A. Yes, sir; Miller was in possession.

Q. Who took that inventory you spoke of?

A. Four of us; James F. McGavock, John B. Tanner, Walter Carter, and myself.

Q. Who of those are here as witnesses in this case?

43 A. James McGavock and Walter Carter I don't think are here; I saw John Tanner here.

Q. You think the stock of goods when you finished up the inventory, without any sales being taken out in the meantime, amounted to $9,500 or $10,000?

A. Yes, sir; that is the best of my recollection.

Q. What was the basis of your estimate?

A. We based it upon the cost of the goods and their make.

Q. How long have you been a merchant or a clerk with a merchant?

A. Since the war; 1866.

Q. Do you know how long that stock of goods has been continuously running? Do you remember how long Warten has been in the dry-goods business?

A. I think he has been in that business for 5 or 6 or 7 years.

Q. Did he have during that time a continuous stock of goods or were they all sold out?

A. They were sold and rebought—sold and rebought during the season.

Q. Then that was a stock of goods that had been kept up for several years?

A. Well, as goods were sold new ones were ordered in place of them.

Q. What would be a reasonable value of the stock of goods of that age and character as upon a per cent. of the cost?

A. Some would be enhanced and some would be decreased in value. It would be in the judgment of the party taking the
44 inventory.

Q. What would have been a reasonable price on a sale of those goods in bulk, taking all of them, the old and the new, the good and the bad?

A. I believe I would have taken them at the invoice. We did not have many old goods. Some I would have taken at the cost price and some I would not. The inventory will show whether they were put at cost or not.

Q. In selling out a stock of goods of 5 or 6 or 7 years old would you have taken them at cost price?

A. No; I would not take them at their original cost.

Q. If that stock of goods had been about 5 or 6 or 7 years old, what per cent. of their cost would they bring?

A. I don't know; there is considerable variety of goods on hand at a time. I expect they would have been worth about ten per cent. below their original cost.

Q. Not more than that?

A. I reckon not, as a whole.

Q. Do you know of any stock of goods in that immediate vicinity sold out in bulk just about that time or just before?

A. I don't remember now.

Q. What per cent. of the cost did the stock of goods sold by Roseman & Bros. not long before that to Glaze & Martin bring?

A. I don't know.

Q. Is it not a fact that 25% was knocked off the cost price in that trade?

45 A. I remember there was a vast per cent. knocked off. That was a very different stock of goods.

Q. Do you know of any other stock of goods sold there in bulk recently, before this transaction?

A. I don't remember now.

Q. Did you ever know of a sale of a stock of goods at 90% of its cost made anywhere—take an entire stock—that had run three or four or five years?

A. I have never known many of those wholesale sales.

Q. Is it not usual to take off 40% when there is a sale of an old stock of goods?

A. Yes, sir; an old stock.

Q. Well, say a stock 5 or 6 or 7 or 8 years old.

A. I could not say about that.

Q. You ceased to be a clerk for Henry Warten on January 13th, 1890?

A. Yes, sir; I was notified just before breakfast.

Q. What time did you take breakfast?

A. It was about my ordinary breakfast time. I was notified by Mr. James McGavock that Henry Warten had failed and he came down to settle up with me. I suppose it was about half after eight.

Re-examination by MILTON HUMES, Esq.:

Q. I understood you to say that that was comparatively a new stock of goods and that you considered its value at the invoice price?

A. Yes, sir; he kept a nice, clean stock of goods.

46 Plaintiffs offer in evidence the affidavit for the attachment in this case, the writ of attachment, the levy of the attachment by the marshal, and the bond for the attachment. These papers are in the record and are there referred to.

The plaintiffs then introduced R. C. BETTS, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. You are a deputy marshal, are you not, Mr. Betts?

A. Yes, sir.

Q. Did you levy the attachment on this stock of goods at Athens?

A. Yes, sir.

Q. Look at the writ of attachment and state when the levy was made.

A. On the 16th day of January, 1890.

Q. Where were the goods at that time?

A. In a storehouse on the east side of the public square in Athens.

Q. Where Henry Warten had been doing business?

A. Yes, sir; his name was over the door.

Q. Did you take an inventory of this stock of goods?
A. No.
Q. What did you do with it?
A. Kept it until the 20th, when Schoolfield, Hanauer & Company gave bond for it.
Q. Did they make an affidavit and bond to try the right of property?
A. Yes, sir.

(Witness identifies bond and affidavit.)

Q. Who made the affidavit?
A. Mr. H. G. Miller.
47 Q. When the bond and affidavit were made you turned the property over to them?
A. Yes, sir.
Q. Did you take possession of the stock of goods?
A. Yes, sir; Mr. Miller gave us the keys of the house. Mr. Greenleaf was with me.

Cross-examination by R. A. McClellan, Esq.:

Q. When you made this levy who was in possession of that stock of goods?
A. Mr. Miller was in the store.
Q. Was Henry Warten anywhere about there?
A. He was not in the store. I had never seen him in my life.
Q. Did or not Mr. Miller forbid you to make the levy, saying it was his property.
A. Yes, sir.
Q. Did he or not say he wanted his attorney to come there? Did he give up the key or surrender anything until he got the advice of his attorney?
A. I think he gave the keys to Mr. Greenleaf; he did not deliver them to me.
Q. He was in possession and protested against the levy?
A. Yes.

Plaintiffs here rested the case.

Claimants then introduced Roswell Hine, who testified as follows:

Direct examination by R. A. McClellan, Esq.:

48 Q. Where do you live, Mr. Hine?
A. In Athens, Alabama.
Q. Are you acquainted with Henry Warten?
A. Yes, sir.
Q. Do you know Mr. H. G. Miller, of the firm of Schoolfield, Hanauer & Company?
A. Yes, sir.
Q. Were you ever called upon to be a subscribing witness to any paper between them?

A. Yes, sir. (Identifies bill of sale.)

Q. Did you or not see Henry Warten sign his name to that paper.

A. Yes, sir.

Q. Was it on the date of that paper that he signed it?

A. Yes, sir; it was on January 13th, 1890, about 5 o'clock in the morning.

Claimants offer in evidence the bill of sale as follows:

THE STATE OF ALABAMA, }
Limestone County. }

Know all men by these presents that whereas I, Henry Warten, am justly indebted to Schoolfield, Hanauer & Co., of Memphis, Tennessee, in the sum of seventeen thousand and thirty-two dollars and forty cents, evidenced by my four notes past due; and whereas said Schoolfield, Hanauer & Co. are willing to take in full payment and satisfaction of said indebtedness the following property: My stock of goods, wares, and merchandise, and safe, store fixtures, and desk, in the storehouse occupied by me on the east side of the public square, in Athens, Alabama, at eight thousand six hundred and thirty-one dollars and twenty-four cents; my stock of goods,
49 wares and merchandise and safe, store fixtures, and desk, in the storehouse occupied by me in Elkmont, Alabama, at two thousand and ninety-seven dollars and eighty-four cents; my lot of mules, horses, and mares, forty-six in number, now in the possession of Owen Black, on his premises on the Nick Davis road, near Athens, Ala., at twenty-seven hundred and sixty dollars; one house and lot at Elkmont Springs, Tennessee, at $250; one house and lot at Elkmont, Alabama, at $500; three-sixteenths interest in certain land in Jefferson county, Alabama, at $500, for which real estate I have already made deeds to said Schoolfield, Hanauer & Co.; my lot of cotton, nineteen bales, in the warehouse of said Schoolfield, Hanauer & Co., in Memphis, Tennessee, at seven hundred and eighty-one dollars and eleven cents; one note on Charles R. Getty due me for thirteen hundred and eighty dollars and ninety-four cents, at thirteen hundred and eight dollars and ninety-four cents; one account on Frank Petty due me for one hundred and eighty-six dollars and seventy-six cents, at one hundred and eighty-six dollars and seventy-six cents; one note due me on Sam. Dunnavant for thirteen dollars and eighty-seven cents, at thirteen dollars and eighty-seven cents; prices deemed reasonable and fair—

"Therefore I, Henry Warten, in consideration of the full payment and satisfaction of said indebtedness thus due from me to said Schoolfield, Hanauer & Co., the receipt for which is hereby
50 acknowledged, do hereby bargain, sell, and deliver to said Schoolfield, Hanauer & Co., my said stock of goods, wares, and merchandise, and safe desk and store fixtures in the storehouse occupied by me on the east side of the public square in Athens, Alabama; my said stock of goods, wares, and merchandise, and safes,

desk, and store fixtures in the storehouse occupied by me in Elkmont, Alabama; my said horses, mules, and mares, forty-six in number, now in possession of Owen Black on his premises on the Nick Davis road, near Athens, Alabama; my said lot of cotton, nineteen bales in the warehouse of said Schoolfield, Hanauer & Co., in Memphis, Tennessee, and said notes and accounts on Charles R. Getty, Sam Dunnavant, and Frank Petty, to have and to hold to them, said Schoolfield, Hanauer & Co., their representatives and assigns.

Witness my hand and seal, Jan. 13th, 1890.

HENRY WARTEN.

Witness:

R. E. HINE.

C. E. McNEELEY.

Q. Did you see the delivery of this stock of goods to Miller?

A. Yes, sir.

Q. You were present?

A. Yes, sir.

Cross-examination.

By MILTON HUMES, Esq.:

Q. What time of the day did you witness this paper?

A. About 5 o'clock in the morning.

Q. Where was it?

A. On the east side of the square.

51 Q. In the house or in the street?

A. In the house.

Q. What day of the month was it and what year?

A. It was this year, January 13th, Monday morning.

Q. Was it before or after daylight?

A. I suppose it was after daylight.

Q. What is your best recollection?

A. It was after daylight.

Q. Was the sun up?

A. I suppose the sun was rising.

Q. How did you happen to be there at that hour in the morning?

A. Mr. McGavock asked me to come up there; I was staying at Mr. Turrentine's store above there.

Q. Were you there when he came after you?

A. Yes, sir.

Q. What McGavock was that?

A. Will; he did not come himself; he sent a clerk for me.

Q. What clerk was that?

A. A Mr. Witty; a young man that clerked there at the time.

Q. Who was in the store when you went there?

A. Mr. Miller and Mr. Warten and Mr. McGavock, and some of the clerks.

Q. Which of them stayed at the store at night?

A. I think some of the clerks stayed at the store at night.

Q. Did Warten stay there at night?
A. I don't think he did.
Q. Was it not unusual for him to be there at that hour in the morning?
52 A. I never noticed.
Q. You say Mr. Warten did not stay there at night?
A. No, sir; I think not.
Q. Was it not unusual for him to be there at that hour in the morning?
A. Yes, sir; I suppose it was.
Q. Had you had your breakfast when you went there?
A. No, sir.
Q. Did you know Mr. Miller then?
A. Yes, sir.
Q. He was representing Schoolfield, Hanauer & Co.?
A. Yes.
Q. You say he was there and Warten and McGavock?
A. Yes, sir.
Q. Who was this other gentleman, C. E. McNeely?
A. He stayed at the depot there.
Q. Is he in Athens now?
A. No, sir; I don't know where he is.
Q. So the two witnesses were you and Mr. McNeely, neither of whom stayed in the store. There were others in the store who could have witnessed it, were there not?
A. Yes, sir; the clerks, I reckon.
Q. Do you know why they did not get Mr. McGavock to witness it?
A. No, sir.
Q. You say Mr. McGavock was there and other clerks. Do you know why they were not called upon to witness it?
A. No, sir.
Q. No reason was given by either Mr. Miller or Warten for that?
A. Not that I remember.
Q. Were you there on Sunday, the day before?
A. Yes, sir; I was in town.
Q. Were you there at that locality on Sunday at any time, either during the day or Sunday night?
53 A. I was in Turrentine's store.
Q. Did you see Mr. Miller and Mr. Warten around there at Warten's store?
A. I don't remember. I frequently saw Mr. Miller around there.
Q. How long had Mr. Miller been in Athens on that visit?
A. I don't remember.
Q. Where did he live then?
A. At Memphis, Tennessee.
Q. And you don't know how long he had been there on the occasion of that visit?
A. No, sir.

Q. Did you not see Miller and Warten at Warten's store Sunday night.

A. No, sir; I saw a light in there, but do not remember seeing them.

Q. Did you not hear talking in there?

A. I don't know.

Q. You knew Warten's voice then, did you not?

A. Yes, sir; but he stayed back in there. I don't know for certain whether I heard it or not.

Q. Was it not unusual for you to see a light there on Sunday evenings?

A. I don't think they usually had one there. I don't know.

Q. What was said when you went in there on Monday morning?

A. That paper was read and they asked me to witness it.

Q. Was the whole paper read to you?

A. Yes, sir.

Q. What was said, if anything?

54 A. Warten said he would turn over his whole stock of goods to Schoolfield, Hanauer & Co., Mr. Miller being their agent. They signed their names and I signed mine, and Warten delivered up the keys and I walked out.

Q. What did Warten say?

A. He told Miller that he turned the stock of goods over to him and gave him the keys.

Q. Did Miller say anything?

A. I don't know, sir; he probably did.

Q. Was there any other paper produced except this?

A. I don't remember.

Q. What is your best recollection about it?

A. I don't think there were any other papers unless there were some notes; I don't know.

Q. Was there no inventory of the goods turned over?

A. There might have been; I don't know.

Q. I am just asking you as to your best recollection as to what did in fact occur. You do not remember to have seen any paper except this?

A. No, sir.

Q. You don't remember to have seen any notes?

A. No, sir.

Q. Did Mr. Miller turn over anything to Warten?

A. Not that I know of.

Q. Did Miller write any paper and sign any paper for Warten?

A. I don't remember.

Q. Did Miller produce any notes and turn them over to Warten?

A. Not that I know of.

Q. Don't you think you would have seen it if it had been done?

A. I probably would.

Q. How late on Sunday night did you see the light in the office of Henry Warten's store?

A. I suppose eight or nine o'clock.

55 Q. What time did you go to bed?
A. I could not tell exactly.
Q. But the light was there when you went to your house from Mr. Turrentine's store?
A. Yes, sir.

Mr. McClellan: Lest there may be a misunderstanding, I will state that the claimants only propose to show the sale of these goods by Henry Warten to them, a *bona fide* consideration therefor, and an adequate price given for the goods by the claimants to Warten on a past-due debt. My view of the law is that, after the plaintiffs have shown the possession and made out a *prima facie* case, the burden is then shifted to the claimants to show the consideration and the sale and the price of the goods. In other words, I do not propose that before any fraud has been imputed or charged it is possible for the claimants to fight that kind of undisclosed proposition. When the claimants have done this, then, if there is any question of fraud, the question is upon the plaintiffs. Then, after they get through, the claimants have the right to rebut on that issue, and the plaintiffs to reply to that if they see proper. I want it understood that I do not open up the defense of this instrument.

Re-examination by R. A. McClellan, Esq.:

Q. You are no wise kin to any of these parties, are you?
A. No.
56 Q. You are not a clerk for either?
A. No, sir.
Q. Do you know whether C. E. McNeely was a clerk for Warten?
A. No, sir; he was not.
Q. You were both disinterested outside men that were called in?
A. I was; I suppose he was.
Q. Is it or is it not a fact that lights were in that house every night of the year?
A. I don't remember.
Q. Did not one or more of the clerks stay in the house every night?
A. I think so, sir.
Q. Was there not a bed-room?
A. I don't know where it was, but I know there was a clerk slept there.
Q. They usually have lights and fires in January, do they not?
A. Yes, sir.
Q. What time did the freight train going north pass Athens that time of the year?
A. I suppose about half — six in the morning.
Q. All you had to do that morning was to subscribe this paper, and when you got through with that you went away?
A. Yes, sir.

Recross-examination by MILTON HUMES, Esq.:

Q. Did you ever hear of this paper before you went in there to sign it?
A. No, sir.
Q. Did you ever hear of any proposed sale by Warten of his peoperty to Schoolfield, Hanauer & Company?
A. Not that I remember.
Q. The first information you had on the subject was when you went into the store and they told you to sign it?
A. Yes, sir.
Q. Was the light you were asked about in the office or upstairs?
A. It was in the office.
Q. And the bed-room was upstairs?
A. I reckon it was.

57 A. C. LEGG.

Direct examination by R. A. MCCLELLAN, Esq.:

Q. Major, where do you live?
A. In Elkmont, Limestone county, Alabama.
Q. How long have you been a citizen of that county?
A. 66 years next January.
Q. What has been your business or calling since you were grown?
A. I have farmed mostly; been merchandising for two years.
Q. Have you had any interest in any store outside of that Elkmont?
A. No, sir.
Q. Did you ever clerk in a store?
A. No; none but my own.
Q. Have you dealt largely or not, as a planter, in goods in country stores?
A. Yes, sir; very largely.
Q. Are you acquainted with Henry Warten?
A. Yes, sir.
Q. Do you know anything of his having a store at Elkmont?
A. Yes, sir.
Q. Did you ever look at that stock of goods in that store with the view of b-ying them?
A. Yes; sir.
Q. For yourself or some one else?
A. For myself and my son-in-law. He proposed to take them and sell them.
Q. When was that?
A. Some time after Christmas.
Q. Who was attempting to sell the goods to you, if anybody?
A. Mr. McGavock.
Q. Did he come for himself or for somebody else?
A. He came for Mr. Miller.
58 Q. Did you go through the goods?
A. I went through carelessly. I did not examine them all. I looked as far as I desired to.

Q. What would have been a reasonable market value for those goods in a lump at that time?

A. I made him a proposition to give him $1,800 for the house and lot and goods and all, the counters and stove and the show cases. I would put the goods at about $1,200.

Q. And the other things, including the land, at $600?

A. Yes.

Q. Was that a reasonable value?

A. I thought so, and was very glad afterwards that he did not take me up at it.

Q. What was the size of that store?

A. I suppose it was 70 feet in length and 20 in width.

Q. How was it built?

A. It was very imperfectly built. It was very inferior work.

Q. What is the size of the city of Elkmont?

A. It has, I suppose, about 300 inhabitants. It is scattered very much.

Q. Are you acquainted with the lot that Henry Warten had just over at Elkmont springs in Tennessee?

A. No, sir; I have not been there since he purchased it; I don't know the place.

Cross-examination by MELTON HUMES, Esq.:

Q. When was it that you say McGavock offered to sell this stock of goods to you?

59 A. It was a day or two after the sale to Schoolfield, Hanauer & Company.

Q. That was the stock of goods at Elkmont?

A. Yes, sir.

Q. There had been no offer to sell you the goods before that?

A. No, sir; Mr. Vaughn had made an offer to buy them previous to that and they did not trade and then I made the proposition.

Q. To whom did Mr. Vaughn make the proposition?

A. Mr. McGavock.

Q. There was no proposition made by Warten?

A. None at all; all that I understood was that Mr. McGavock, as the agent of Schoolfield, Hanauer & Company, offered to sell them.

Q. This proposition that you have reference to was between Mr. McGavock, acting for Schoolfield, Hanauer & Company and the party you spoke of, and it was after this alleged sale by Warten to Schoolfield, Hanauer & Company?

A. Yes, sir.

Q. Now, I understand you to say that you did not make a careful examination of that stock of goods?

A. I did not. I looked at the invoice and satisfied myself of the character of the goods and offered $1,800 for the stock of goods and the house and lot and all.

Q. And that proposition Mr. McGavock declined?

A. Yes, sir.

Q. What did he offer them to you for?

A. My recollection is that he offered the lot of goods and the storehouse and all for $2,100.

Q. That was the price he put on them?

60 A. Yes; no; it was twenty-one hundred and eighty-odd dollars. I would not be positive about that. I paid no more attention to them after he told me what he wanted for them, and I would not have given any more, not a dollar, and was glad afterwards I did not get them.

Q. Did he not offer you the stock of goods there—wares and merchandise, including the safe and storehouse and the desk, for $2,497.84?

A. I would not be positive; he first asked me $2,500; said it was invoiced at that about, and I told him I wouldn't give that, and finally I made him the offer of $1,800, and paid very little attention to what he said after that.

Q. Did the $2,500 include the lot?

A. Yes, sir; it included the real estate as well as the stock of goods, and, I think, from 50 to 100 bushels of cotton seed.

Q. What did he say they were invoiced at?

A. He said $2,500, but I saw the invoice and knew it was very imperfectly taken. I saw some gentlemen (for instance) invoicing a lot of coats, and they were guessing them off at $2.50 and $3; a very inferior lot of coats; not worth near that much.

Q. Well, McGavock said he would take $2,500, the invoice price of the stock of goods?

A. Yes, sir; about that.

Q. You do not remember at what price he finally offered to let you have the stock of goods?

A. It was somewhere about $2,100 or $2,200.

Q. And you declined to pay that, and you did not make any trade?

A. No, sir.

Q. Do you know to whom he sold them?

61 A. They were shipped to Athens, and Miller took possession of them. I think McGavock came there and had them boxed up and shipped to Athens.

Q. What was done with the house and lot?

A. It is there yet.

Q. I didn't suppose it had flown off; has it been sold?

A. I understand it was sold to Miller.

Q. Has it been sold to any one else?

A. No, sir; it has been offered several times.

Q. Then, Schoolfield, Hanauer & Company are still the owners of that lot?

A. That is my understanding about it; I don't know.

Q. Do you know anything about that lot at Elkmont springs?

A. I do not, sir.

Q. Were you there when those goods were boxed up for removal?

A. Yes, sir.

Q. Who was doing that work?

A. Mr. McGavock was superintending it. He was in the employ of Warten before that at Athens. My understanding was that he was receiver for Miller.

Q. Who was he receiver for before that?

A. Warten.

Q. He just came up there after the store at Athens changed hands?

A. Yes.

Q. What position did he have in Warten's employ?

A. I found him there frequently behind the counter; he was a salesman and a common clerk.

Q. He was not the book-keeper?

A. No; Warten kept his own books.

Q. You spoke of Mr. McGavock as receiver. What did you mean by that?

62 A. I understood by that that he was employed by Schoolfield, Hanauer & Company to take possession of the books and goods.

Q. What do you mean by the books?

A. The books of account and their general business.

Q. Who did you get that understanding from?

A. It was the general impression throughout the country. It was talked of by everybody, nearly, who was acquainted with the business.

Q. That was James F. McGavock, was it?

A. Yes, sir.

Re-examination by R. A. McClellan, Esq.:

Q. As I understood you Mr. McGavock was understood to have been employed by Schoolfield, Hanauer & Company to arrange this property they had bought from Warten?

A. Yes, sir.

Q. I understood you to say, in answer to an question of Capt. Humes, that it was the general impression that Warten had sold out this property to Schoolfield, Hanauer & Co.?

A. Yes, sir.

Q. Has it not thus been generally understood ever since?

A. Yes, sir.

Q. Who took the inventory of the stock of goods at Elkmont?

A. Mr. John Strain, D. T. Phillips, and Ed. Scott.

Q. When was it taken—how long before the sale by Henry Warten to Schoolfield, Hanauer & Co.?

A. A week or ten days or, perhaps, two weeks. I was in there every day, perhaps. The inventory was taken in a mighty careless way.

63 Q. Who was in charge of that branch stock of Henry Warten's?

A. Mr. John Strain.

Claimants then introduced W. B. VAUGHN, who testified as follows:

Direct examination by R. A. MCCLELLAN, Esq.:

Q. Are you a citizen of Limestone county, Alabama?
A. Yes, sir.
Q. At what place do you live?
A. At Elkmont, on the Louisville & Nashville R. R.
Q. How far is that from Athens?
A. 9 miles.
Q. How far from the State line?
A. 5 miles.
Q. What business are you engaged in?
A. In the mercantile business at present and farming.
Q. What has been your business since you set up for yourself?
A. I have been a farmer and merchant; have been merchandising about 16 or 17 years and connected with a farm all the time.
Q. Are you acquainted with Henry Warten?
A. Yes, sir.
Q. Did he have a store at Elkmont last year?
A. Yes, sir.
Q. How long have you had your store at Elkmont?
A. 5 years the 15th day of next Feb'ry.
Q. When did he set up his store there?
A. It has been four years. I think he set up in the spring. It was either the spring or fall; I don't remember exactly what time.
64 Q. What was the character of the goods Warten kept in that branch store?
A. I think he kept a general line of merchandise, dry goods, groceries, and general farm supplies.
Q. Do you remember the day on which it was said Warten sold out that stock of goods, among other things, to Schoolfield, Hanauer & Company?
A. I don't remember the precise day.
Q. You heard of it at the time?
A. Yes, sir.
Q. Did you or not after that look into that stock of goods with a view of buying them?
A. I did.
Q. How long after that?
A. A short while; four or five or six or ten days.
Q. Did you go through the goods?
A. I went through the greater portion of the stock.
Q. Did you see enough of them to act on in *in* reference to buying or not?
A. Yes; I satisfied myself as to what I would be willing to give as a purchaser.
Q. What was a reasonable value of those goods sold in bulk at that time?

A. I did not go through the entire stock of goods. I went through the staple portion and the notion goods—a portion of them.

Q. But from the invoice taken by Mr. Strain and Mr. Phillips what would you say was a fair, reasonable price for them?

A. I thought the invoice was rather high; I think it footed up about $2,400; there was a good deal of hard stock in the stock of goods. I would have thought that $1,200 would have been
65 a fair valuation of the stock of goods in the condition they were in.

Q. Are you acquainted with the storehouse and lot in which they were?

A. Yes, sir.

Q. What was about that time a reasonable value for that?

A. Well, I owned a storehouse below his. I think my house was about the same dimensions as his, and there was a side room and an upstairs, I paid $500 for my storehouse, with a safe and billiard-table and show cases. I should have thought $500 a big price for the house owned by Henry Warten.

Q. Did you get into any negotiations with anybody after this alleged sale by Warten to Schoolfield, Hanauer & Company about the purchase of those goods?

A. At Mr. McGavock's instance I looked through the stock of goods.

Q. Who was he?

A. He was the agent, I supposed, either for Henry Warten or Schoolfield, Hanauer & Company.

Q. Your conversation was with him?

A. Yes, and with Mr. John W. Strain.

Q. In whose interest was Mr. McGavock acting there?

A. I think he told me he was in the interest of Schoolfield, Hanauer & Co.

Q. Did you make him any offer for the goods or real estate?

A. Yes; I made him an offer for his general merchandise there and his house and accounts.

Q. That was before the sale, was it not?

A. Yes, sir.

Q. I am now talking about the negotiations after the sale?

66 A. I don't remember that I made him a direct offer after the sale. Mr. McGavock wanted me to make an offer of what I would be willing to give for it.

Q. You say that $1,200 was a good price for the goods and $500 for the real estate?

A. There was a good deal of hard stock in it, and it seemed like the goods had been handled for a long time, and the goods were rather badly purchased—at more than I would have paid for them. I don't think I would have given $1,200 for the stock of goods.

Q. What became of those goods?

A. They were boxed up and shipped from Elkmont. I think they were consigned to Athens; I don't know, however.

Q. Before Warten sold this property to Schoolfield, Hanauer &

Company did you make him any proposition or he to you about the sale or purchase of that property up there?

A. Yes; through Mr. John W. Strain he made me a proposition; he offered to sell me his business there—his house, stock of goods, and his accounts—and we ran through and got up the accounts, and I just made him the broad offer of $3,000 for the whole business.

Q. What was included in that?

A. The storehouse and stock of goods and accounts and all——

Q. What was the gross amount of the accounts, if you remember, in that proposition?

A. I think it ran up to something over $9,000.

67 Q. What was the matter with the balance of the $9,000?

A. They were on too many men that were not good; there were a great many worthless accounts in it.

Q. Did you have any conversation with Warten or did you talk with Mr. Strain?

A. I did most of the talking with Mr. Strain and, finally, he insisted upon my making an offer, and I made the offer of $3,000 to Warten.

Q. Was that cash?

A. That was spot cash.

Cross-examination by MILTON HUMES, Esq.:

Q. I understand you to say that there was a proposition made by you for the purchase of this stock of goods and the accounts and the storehouse *made* to Warten, through his agent Mr. Strain, before the sale to Schoolfield, Hanauer & Company?

A. Yes, sir.

Q. How long before the sale?

A. I think two or three weeks, perhaps four. Mr. Strain made the proposition to me to look through the stock and asked me the question if I would buy them; and I said I did not know; I would look through the stock and it might be possible that I would, but I could not answer him positively; and he and I then went through the stock, and Mr. Strain and Mr. D. T. Phillips. I went through with the view of buying them. I carelessly scanned the invoice, and, of course, if we had made the trade the guaranty would

68 have been that the articles named in the invoice would have been forthcoming.

Q. They had an invoice of the stock of goods?

A. Not when the trade was first spoken of, but afterwards they went through and took it.

Q. Before your proposition was made they did take an invoice?

A. Yes.

Q. Was that invoice taken before or after the 1st of January?

A. I could not say. I think it was taken with a view of ascertaining as to what the value of the property was, to get a proposition on it. They had offered it to Major Legg and Mr. Griffin and then sought me as a purchaser, as they did not make a trade.

Q. And after the invoice was taken you offered $3,000, and that was declined?

A. Yes; I offered that for the house and lot and the stock of goods and his accounts.

Q. What was the nominal value of those accounts?

A. My recollection is that the lot of accounts invoiced between $8,000 and $9,000, but there were a great many worthless accounts. Of course there were some good accounts. There were a great many that I did not consider good.

Q. That proposition was not accepted and afterwards you and Mr. McGavock had some passes with a view of a trade?

A. Yes, sir.

Q. You say that you supposed that McGavock was acting for Warten or somebody else?

A. Yes, sir.

69 Q. Why did you suppose he was acting for Warten?

A. I just supposed he was his clerk. He had been his clerk, but I learned that Warten had sold out to Schoolfield, Hanauer & Company. I did not question him in regard to it.

Q. McGavock offered to sell you the same property that Warten had offered to sell you through Mr. Strain?

A. No; he proposed to sell the stock and the house and wanted to know what I would give for the stock and the house. I told him I did not want that trade. He asked what I would give for the stock of goods in the house.

Q. Did he have charge of the books?

A. I don't know.

Q. Did he offer to sell them?

A. No, sir.

Q. When McGavock offered to sell you the stock of goods it was at Elkmont?

A. Yes, sir.

Q. And how long afterwards was it that the stock of goods was removed?

A. I did not pay much attention to it; it was several days before they were moved.

Q. Did you hear of the store of Henry Warten at Athens being seized by the U. S. marshal under attachment?

A. I did not then, but did afterwards.

Q. Did you hear of that before or after the goods were removed from Elkmont to Athens?

A. I don't remember the date.

Re-examination by R. A. McCLELLAN, Esq.:

70 Q. Is it or is it not a fact that Mr. McGavock told you that he was up there to sell those goods for Schoolfield, Hanauer & Company?

A. I think that he just asked me the question if I would buy the goods, and I just answered him, I declined it entirely, and told him the trade would not suit me at all.

Q. Previous to the time of the sale to Schoolfield, Hanauer & Company there was an effort made by Strain to sell you the goods

and the accounts, and after the sale Mr. McGavock made you an offer?

A. Yes, sir; I had been informed he was assignee.

Q. Was it or not after the 1st day of January when Strain, for Warten, made this effort to sell you this stock of goods for cash?

A. I don't remember. I did not pay any attention to the time.

Q. Was it or not after the inventory was taken that you finally wound up with declining the trade when Mr. Strain made the proposition?

A. The first proposition was at the instance of Mr. Strain, for Warten, and we went through the stock of goods.

Q. That inventory was taken before you declined to make the purchase?

A. Yes, sir.

Q. Are you acquainted with the house and lot that Henry Warten had at Elkmont Springs?

A. I have seen it, but was never in the house.

Q. How far is that from Elkmont, Alabama?

A. 9 miles.

Q. What would be a reasonable value of that house and lot, in your opinion?

71 A. I could not say. I don't know. The cabin would not be expensive, I think.

Q. Do you remember what the cabins at that place were made of, logs or planks or what?

A. The bulk of them were box houses. I don't remember Warten's. I don't know which was his. I don't remember to have ever been there when he was there. I was in Tom Neely's house there once or twice.

Claimants then introduced JOHN W. HILL, who testified as follows:

Direct examination by R. A. MCCLELLAN, Esq.:

Q. Where do you live, Mr. Hill?

A. In Athens, Alabama.

Q. How long have you lived there?

A. Not quite two years.

Q. Where did you live before that?

A. At Veto, on the line of Alabama and Tennessee.

Q. How far is the State line from Athens?

A. About 18 miles.

Q. How far from Elkmont?

A. About 6 miles.

Q. What business have you been in for the last several years?

A. Farming principally.

Q. Anything else?

A. Yes; I have sold goods.

Q. Are you acquainted with the house and lot at Elkmont formerly owned by Henry Warten?

A. Yes, sir.

Q. Early in January of this year what would have been a fair cash value for that lot?

A. I reckon between $400 and $500.

72 Q. Do you think it is not worth more than $500?

A. No, sir.

Q. How long have you been acquainted with the house?

A. Ever since it was built.

Q. Have you been engaged in handling stock and farming of stock?

A. Yes, considerably.

Q. How many horses or mules have you used in making your crops the last several years?

A. The last 10 or 15 years from 75 to 80 head.

Q. Have you bought and sold them and had occasion to know the price of such things?

A. Yes; pretty well.

Q. On or about the middle of last January did you see a drove of horses, mares, and mules that had been sold by Henry Warten to Schoolfield, Hanauer & Company at Owen Black's place?

A. Yes, sir. I went out to see about trading for them. I first went at Warten's instance and then at Mr. Miller's.

Q. Did you go out there before Warten sold them to Miller?

A. Yes, sir.

Q. Did Warten make any effort to sell them to you?

A. Yes, sir. I went out there on Saturday before he broke, and told him how much I thought they were worth.

Q. How long after Miller bought them before you saw them again?

A. The next week. I went out there and looked at them.

Q. Was Mr. McGavock then acting as clerk or agent for Mr. Miller?

A. Yes, sir.

Q. Did you look at all the stock, 46 or 47 head?

A. Yes, sir.

73 Q. What, in your opinion, on the second occasion that you saw that lot of stock, would be a fair cash value of it?

A. I thought $2,000. I offered that for them.

Q. Did you buy any of them?

A. Yes, sir.

Q. How many?

A. Fifteen head.

Q. The best or worst?

A. Fifteen of the tail end.

Q. What did you give for the 15?

A. $555.

Q. What was the matter with that lot of stock that they were not worth over $2,000?

A. It was a pretty rough lot; they had been badly treated and were in a bad fix; there were some good mules and horses.

Q. Do you know where Warten got that stock?

A. No, sir.

Q. Do you know what became of the balance of the 46 head that you did not get?

A. Mr. Miller shipped them, I understood.

Q. What sort of business was Warten engaged in up to last January?

A. The mercantile business.

Q. Was it large or small?

A. I suppose he had the largest business in the country.

Q. Do you know whether or not his trade extended pretty well over the country?

A. I think it did.

Q. Were you in Athens on Monday, January 13th, 1890?

A. No, sir.

Q. When did you come there?

A. On the night of Tuesday.

Q. Was it or not a notorious fact immediately on Monday or Tuesday of the week that Warten had sold out his stock of goods and property to Schoolfield, Hanauer & Company?

A. Yes; I heard it on Monday.

Q. How far from Athens did you hear it?

74 A. A few miles.

Q. During the year 1889 was Henry Warten indebted to you in any sum?

A. Yes, sir.

Q. In what amount?

A. $1,000 to $1,500.

Q. Has that been paid?

A. Yes, sir.

Q. Do you remember whether it was paid in money or by check?

A. It was paid partly in money and partly in check.

Q. On whom was the check?

A. On Schoolfield, Hanauer & Co.

Q. Do you know anything about any other checks he drew on them?

A. No, sir; I believe not.

Q. Was there or not any as bad mules left in the lot as some you had?

A. There was not much difference.

Cross-examination by MILTON HUMES, Esq.:

Q. How many mules were there in that lot of stock?

—. There were 46 or 47 head of stock in all.

Q. You don't know how many mules and horses and mares there were?

A. No, sir.

Q. In that 15 tail end that you got did you get horses or what?

A. I got 5 mules and 10 horses and mares.

Q. How many horses?

A. Four, and six mares.

Q. Who did you buy them of?
A. Mr. McGavock.
Q. Did you pay him the money?
A. Yes, sir.
Q. You don't know what he did with the money?
A. No, sir.
Q. How did you pay him?
A. For the lot of ten I paid him in currency, and the other I gave my note for it. I paid $225 for ten mules & horses.
75 Q. That's how much apiece?
A. $22.50.
Q. And the other five, what did you give for them?
A. I gave my note for $330 for them.
Q. Who was the note payable to?
A. To Schoolfield, Hanauer & Company.
Q. When was it payable?
A. The 15th of next month (November).
Q. Did you give them any security?
A. No, sir.
Q. Just gave your note?
A. Yes, sir.
Q. You did not reserve a lien on the stock?
A. No, sir.
Q. And that was the trade that you and McGavock made?
A. Yes, sir.
Q. You went to Athens in the first part of 1889?
A. Yes, sir.
Q. What have you been doing there since?
A. I live in the town and farm in the vicinity.
Q. Do you recollect when it was that you made this trade with McGavock?
A. No; I don't recollect the date.
Q. Was it in the month of January?
A. I did not pay any attention to the time; it was the latter part of January or the first of February.
Q. Were you a customer of Warten's during the year 1889?
A. Yes, sir.
Q. When was it he settled this debt he owed you?
A. He was owing me a debt for three or four years; it was settled in 1888; no, in the winter of 1889.
Q. You mean the winter of 1888–'89?
A. It was the winter or latter part of the fall of 1889.
Q. How much did he pay you then?
76 A. He owed me a balance of $1,000 or $1,200, and he paid it.
Q. How did he pay it?
A. Part in currency and part in check.
Q. How much in currency and how much in check?
A. I think he gave me a check for about $500 and the balance in money, $600 or $700.
Q. Who was the check on?

A. Schoolfield, Hanaur & Company; all the checks he ever gave me were on that house.

Q. Was that just an ordinary check?

A. Yes, sir.

Q. Was that paid?

A. Yes, sir.

Q. When was it paid?

A. Some time before he broke; the early part of the cotton season.

Q. It was given in the fall of 1889?

A. Yes; it was the last settlement with us. We had business in money matters about three years' standing. As I needed money I would call on him for it, and when he did not have it he would give me a check on Schoolfield, Hanauer & Company.

Q. When did he pay you the money?

A. The latter part of the fall.

Q. Did he pay you the currency at the time he gave you the check?

A. No, sir; when I needed the money I would call upon him for it just as I needed it; sometimes I would get $100 or $200 or $500, or sometimes a $1,000.

Q. Mr. McGavock would not take $2,000 for that lot of stock?

A. No; I did not offer it to him; I offered it to Warten.

Q. Did Warten offer to sell them to you?

77 A. Yes, sir; but he said they were worth more money.

Q. What did he offer to sell them to you at?

A. I think he wanted $2,250.

Q. Did he want the cash for them?

A. He did not say; I suppose he did.

Q. Was Warten owing you anything when he sold out to Schoolfield, Hanauer & Company?

A. No, sir.

Q. You had collected everything?

A. Yes, sir.

Q. He had been owing you for several years?

A. Yes, sir; I loaned Warten at one time $7,500.

Q. But several months before he failed you got even with him?

A. Yes; three months, I reckon.

Q. Who is Owen Black?

A. He is a young man that lives near Athens, about a mile.

Q. He was the man that had charge of those mules?

A. Yes, sir; he had charge and was feeding them; they were on his place.

Re-examination by R. A. McClellan, Esq.:

Q. If I understood you, it was last fall that you wound up your business with Warten?

A. Yes, sir.

Q. And he paid you off part in money and part in checks?

A. Yes.

Q. You do not remember about the dates?

A. No, sir.

78 Claimants then introduce WILLIAM H. BURKE, who testified as follows:

Direct examination by DAVID POSTON, Esq.:

Q. What is your business, Mr. Burke?

A. I am book-keeper for the Schoolfield-Hanauer Co.

Q. How long have you been such?

A. About ten years, in all. I was book-keeper for Schoolfield, Hanauer & Company before they were incorporated, and since the incorporation I have been book-keeper for the Schoolfield-Hanaur Company.

Q. When did the Schoolfield-Hanaur Company commence business?

A. They began business in April, 1889. The firm continued till that time.

Q. In what capacity have you been employed there?

A. I have been book-keeper for the house most of the time—about 8 years.

Q. Do you know Henry Warten?

A. Yes, sir.

Q. How long have you known him?

A. About 8 or 9 years; since about the time he commenced business.

Q. Had he been dealing with the firm of Schoolfield, Hanauer & Company; if so, how long?

A. I think from the time when he commenced business in Athens, which was, I think, in 1881.

Q. Have you a statement of his account? If so, I wish you would produce it.

(Witness produces accounts attached.)

79 Folio 683. MEMPHIS, *Nov. 8th*, 1881.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., 256 Front street.

July	19.	To balance		69	6	3 03	Sep.	2.	By cash		66	7 34	500	
	29.	mdse.		69	2 32	152		7.	" "		61	28 37	2,094	
Aug.	22.	"		46	22 84	2,232 69		15.	" pepper & oysters		53	13	11	40
	24.	"		44	2 00	205		29.	" scales		39	10	11	75
	31.	"		37	46	56 12	Oct.	2.	" crackers		36	4	3	94
	"	"		37	12	15 21		"	" cash		36	1 60	200	
Sept.	2.	"		36	1 98	247 88		12.	" J. E. Logwood		26	40	70	
	5.	"		33	82	109 69		19.	" cash		19	4 22	1,000	
	7.	"		31	65	94 57		22.	" raisins		16	2	6	
	9.	"		29	1 29	200 66		"	" coffee & peaches		16	11	32	12
	10.	"		28	17	28 50	Nov.	4.	" cash		4	8	90	
	12.	"		26	39	68 05		8.	" balance		...	.....	2,137	06
	14.	"		24	20	36 86						42 41		
	17.	"		21	2	3 79			Due me			5 17		
	"	"		21	2	14 30						47 58		
	22.	"		15	85	254 19						35 60		
	29.	"		9	28	137 99								
	"	"		9	35	173 58								
Oct.	1.	"		7	31	199 84								
	3.	"		5	37	339 61			Due me			11 98		
	5.	"		3	2	23								
	6.	"		2	8	179 76								
					35 60									

	14.	"	.....	17		130	49		
	18.	"	.....	77		343	38		
	20.	"	.....	24		89	98		
	22.	"	.....	13		46	95		
	25.	"	.....	33		106	30		
Nov.	2.	"	.....	27		71	18		
	4.	"	.....	2	62	491	55		
		"	.....	64		110	12		
		Due me.....		5	17	6,156	27		6,156 27
Nov.	8.	To balance.....				2,137	06		

DEAR SIR: We hope you will find above correct. If not, please report. You will oblige us in future by sending bills for goods returned or damaged.

Y'rs truly, S., H. & CO.
D.

80 Folio 683. MEMPHIS, *Dec.* 30, 1881.

Henry Warten, Esq., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Nov.	8.	To balance.....	32	2,137	06	23	10	Nov.	9.	By cash.....	3	38	298
		" " mdse.....	27	232	19	1	13		21.	" "	10	89	1,000
	11.	" "	20	137	25		61			" 1 b. c.....		21	20 67
	15.	" "	18	16	54		06	Dec.	22.	Cash.....	2	67	1,500
	18.	" "	13	131	14		38		30.	By balance.....	9	19	1,815 58
		" " cash.....	43	90			86						
	25.	" mdse.	5	47	75		05						
	26.	" "	4	42	15		03						
	28.	" "	2	169	94		12	5					
	30.	" "	...	71	25								
		" " cash.....	...		50								
Dec.	5.	" mdse.	5	215	99		.....	24					
	9.	" "	9	64	75		.....	13					
	10.	" "	10	144	43		.....	32					
	13.	" "	13	182	94		.....	53					
	14.	" "	14	78	91		.....	25					
	16.	" "	16	70	50		.....	26					
	17.	" "	17	300	89		.....	1 14					
	20.	" "	20	62			.....	28					
	19.	" "	19	29	23		.....	12					
	20.	" "	20	46	50		.....	21					
	22.	" "	22	24	75		.....	12					
	24.	" "	24	243	79		.....	1 30					
	27.	" "	27	39	61		.....	24					
	29.	" cash.....	29	45			.....	29					
	30.	" interest... ...	30	9	19			5 48	due me.		26	34	4,634 25
				4,634	25	26	34						
	30.	To balance.....		1,815	58								

DEAR SIR: We hand above statement of ac. as requested, which we trust you may find correct. Balance, 1,815.58.

With the compliments of the season, we remain,

Very truly yours, SCHOOLFIELD, HANAUER & CO.

81 Folio 697. MEMPHIS, *Febr'y 23rd*, 1882.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Dec.	3.	To balance.....	53	1,815	58	21	36	Jan.	11.	By cash.....	44	49	50
'82.		Cash bill.							17.	" "	36	16	20
Jan.	3.	" mdse.....	30	152	67	1	66		23.	" "	30	6 66	1,000
	11.	" "	12	601	98	1	60		30.	" "	23	50	100
	16.	" "	7	123			18			Lard.			
	21.	" cash ex.....	2		90		0		"	" mdse.....	"	21	43 08
		C. bill.								36			
	17.	mdse.....	36	610	32	4	88			17			
	21.	"	...	51	60		02						
	23.	cash.....	30	1	50		"	Feb'y	4.	" cash, 19c.....	19	1 68	400
		C. bill.							7.	" " x	16	17	100
	"	mdse.....	30	479	68	3	20		8	" "	15	1 66	500
	"	"	30	39	08		25		"	" 1 b. c.....	15	12	38 25
	24.	"	29	128	14		82		13.	" cash.....	10	2 88	1,300
	5	Due 105.							14.	" 2 "	9	15	72 55

	28.		" 0	146		0			17.	" cash.....	3	66	500
		10	Due 105.						20.	" "	6	32	475
Feb'y	3.		" 20	2,284	75	10	14	x					4,599 88
		11							23.	" "	"	0	2,000
	4.		" 19	300	92	1	26	x					6,599 88
		13								Corn.			
	6.		" 07	16	14		"		"	" mdse..... ...	31	80	8 29
		14											6,608 17
	7.		" 0	3	54		"		23.	" balance.....			1,683 66
		15											
	8.		" 0	497	28		"	1 66					
		16											
	9.		" 0	29	05		"	10					
	10.		" 13	517	30	1	48						
	11.		" 12	96	75		25						
		20											
	13.		" 10	63	63		13	x					
	15.		" ..... "	48	90		09						
	16.		" 7	96	84		15						
		27											
	20.		" 0	154	48		"	92					
								2 74					
	23.	" interest.....		31	80		.....	19					
				8,291	83	47	46	2 93	due me.		47	46	8,291 83

23. To balance.....
x Feb'y 3.
Notice. x " 4.

82 Folio 697. MEMPHIS, *April* 10, 1882.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

Feb'y	23.	To balance.....		1,683	66	M'ch	3.	By 1 b. c.....		40	49
		Telegram.					4.	" 4 "		176	39
	"	" cash.....		35			7.	" mdse., sundries.....		111	32
		Expressage.					13.	" cash.....		300	
	24.	" "		1	80		16.	" "		650	
	"	" mdse.....		5	33			1,578.20			
		Telegram.						1,548.41			
	25.	" cash.....		40			24.	" " 3,126.61 xx		300	
	"	" mdse.....		514	20					1,578	20
	"	" "		363	55						
M'ch	6.	" "		304	36		29.	" "		4	50
	13.	" cash.....		50			"	"		1,548	41
	16.	" mdse.....		608	56		"	"		125	84
	17.	" "		70	50	Apr'l	6.	" "			
	18.	" "		344	35		10.	" mdse. (1).....		34	97
	20.	" cash.....		30			"	" interest.....		27	93
	22.	" mdse.....		39	73					3,319	85
		Bal. here y'r stat'm't.				866	22				
	23.	" " *.....		128	24	x	x	" " balance.....		2,018	39
				4,065	33						
	27.	" "		318	16						
	29.	" "		212	30						
April	1.	" "		671	45						
				5,267	74						
	10.	....		70	50						
				5,338	24					5,338	24
Apr.	10.	To balance.....		2,018	39			By J. B. McDound.....		1	74

From y'r st'm't—mdse. credits:

Oct.	6.	Allowed by J. E. L.....		15 97
Dec.	20.	" " "		17 50
"	"	Snuff.....		1 50
				34 97

DEAR SIR: We credit your ac., as on st'm't above, with mdse. allowed by Mr. Logwood, $34.97, & int., $27.93. These credits, to date of y'r stat'm't sent us, makes our balance $866.32. McD.'s d'ft, $50.00, and corn error, $16.32, which we cannot allow, added to y'r balance, makes us agree.

Please repolt all reclamations and items for same as promptly as possible, so we may credit as near the proper date as possible.

83 Folio 669. MEMPHIS, *July 6th*, 1882.

Henry Warten, cotton ac., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

May	6.	To cash s.d. Orgill Bros.	60	13 48	17	May	25.	By 9 b. c.	41	3 82	420 39
	8.	" " " B. S. Rhea & Sons	58	266 92	3 44	"		" " " 3 "	41	1 06	117 05
	"	" ex. on B. S. Rhea & Sons	58	65	0	June	13.	" 1 "	23	28	54 92
	"	" cash s. d. on Marshal & B. & L.	58	6 23	9	"		" " " 2 "	23	40	77 94
	"	" cash s. d. on Max Rosenheim & Co.	58	24 92	32	"	21.	" 1 "	15	16	50 17
	10.	" cash s. d. on Rock City Steam B. Co.	56	27 74	34	July	26.	" 24 "	"	0	1,140 52
	"	" cash s. d. on S. B. Spurlock	56	7 50	9					8 69	1,860 90
	"	" cash s. d. G. S. Wessell & Co.	56	4 10	5						
	"	" cash s. d. P. Jackson & Co. & ex.	56	80 14	99						
	12.	" cash s. d. on Atwood & F. & ex.	54	11 93	14						
	"	" cash s. d. H. Coon & Son & ex.	54	232 57	2 78						
	"	" cash s. d. on Gray, Fall & Co.	54	29 15	36	O K. V.					
	15.	" cash s. d. J. S. Rhea & Son & ex.	51	475 79	5 39						
	16.	" cash s. d. on C. Herzog & Bro	50	23 04	25						
				1,204 16							
July	6.	" interest		8 69							
				1,212 85							
		" balance		648 05							
				1,860 90	14 41					14 41	1,860 90
Transferred to cr. mdse ac.				648 05		July	6.	By balance			648 05

84 Folio 670. MEMPHIS, *July 19th*, 1882.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Apr.	10.	To balance	2,018 39	44 40		Apr.	10.	By J. B. McDowell	4	1 74	
	11.	" mdse	55 40	82		"	17.	" cash	10 57	517 96	
	12.	" "	144 63	2 15			14.	" mdse	65	31 53	
	17.	" "	7 25	10			24.	" "	18 89	1,000	
	22.	" "	674 27	8 54			25.	" "	3	1 75	
	24.	" "	123 89	1 51			26.	" cash	11 04	600	
	26.	" "	43 35	50		May	5.	" "	2 15	131 10	
	28.	" "	12 85	14			12.	" "	1 94	131 40	
	27.	" "	1,080	12 48			4.	" mdse., soap	04	3	
May	1.	" "	13 25	13			20.	" cash	1 56	119 75	
	12.	" "	61	50			23.	" "	33	26 48	
	19.	" "	82 35	54		June	1.	" "	3 20	300	
	25.	" "	84 10	44			12.	" "	2 31	282 55	
	27.	" "	37 75	18			8.	" mdse., bags sugar, &c.	10	11 14	
	29.	" "	71 90	36			13.	" cash	1 62	203 33	
June	12.	" cash dis.	70	"			"	" "	32	40	
	14.	" mdse.	124 45	13			20.	" "	2 40	250	
	20.	" "	65		1		21.	" "	92	150	
	23.	" "	2 65				28.	" "	92	200	
	27.	" cash d'ft unpd.	186 50	90			30.	" "	78	186 50	
	24.	" mdse	289 25		32	July	6.	" cotton ac	1 87	648 05	
	29.	" "	748 86		1 67		12.	" cash	69	448 85	
July	4.	" "	43 91		15		"	" mdse., hams	2	20	
	7.	" "	91 22		36		15.	" "	4	50	
	12.	" "	134 12		68		19.	" "		325	
	15.	" "	25				"	" balance	11 39	620 20	
	17.	" "	91 65								
	19.	" interest	11 39		57						
			6,300 33	73 82	3 76	due me.			73 82	6,300 33	
		To balance	620 20								
			36 10					1.50 drayage.			
			584 10					36.10 meat ret'd.			

85 Folio 670. MEMPHIS, *Sept. 29th*, 1882.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

July	19.	To balance		620 20
	"	" mdse.		90 09
	20.	" "		48 25
	25.	" "		116 75
	26.	" "		129 70
	28.	" cash		56 36
	29.	" mdse.		116 75
	31.	" "		271 47
Aug.	9.	" "		231 25
	10.	" "		39 30
	12.	" "		32 75
	"	" "		46 44
	14.	" "		116 75
	15.	" "		259 50
	19.	" "		13 00
	21.	" "		17 05
	25.	" "		46 60
	30.	" "		350 64
	"	" "		119 25
Sept.	1.	" "		238 50
	"	" "		86 11
	4.	" "		104
	6.	" "		131 08
	8.			57
	9.			366 65
	11.			135 59
	12.	" cash, dis. & ex		1 90
	18.	" mdse.		655 47
	20.	" "		77 75
	21.	" "		94 95
	22.	" cash, telegram		50
	25.	" mdse.		220 25
	26.	" "		33 01
	"	" "		504 42
				5,429 55
Sept.	29	To balance		3,298 32
				193 70
				3,104 62

July	24.	By meat		36 10
	26.	" cash		130
Aug.	2.	" "		225
	17.	" mess pork		24
Sept.	12.	" cash		1,000
	14.	" "		136 13
	20.	" "		230
	26.	" "		350
	29.	" balance		3,298 32
				5,459 25

cash.

86 Folio 670. MEMPHIS, *Dec.* 14, 1882.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Sept.	29.	To balance	75	3,298 32	54 96	
	30.	" mdse.	44	250	2 44	
	30.	" "	44	47 46	45	
Oct.	3.	" "	41	82 65	74	
	6.	" "	38	44 80	36	
	9.	" "	35	368 67	2 85	
	9.	" "	35	31 30	24	
	10.	" "	34	33 15	25	
	12.	" "	32	41 75	28	
	13.	" "	31	61	41	
	14.	" "	30	71 92	48	
	18.	" "	26	14 53	08	
	"	" "	26	667 35	3 85	
	26.	" "	18	856 53	3 42	
	31	" "	14	13 97	03	
Nov.	1.	" "	13	129 35	36	
	2.	" "	11	308 10	81	
	3.	" "	10	94 50	22	
	6.	" "	8	198 13	35	
	8.	" "	6	49 39	06	
	9.	" "	5	112	12	
	11.	" "	3	91	05	
	13.	" "	1	446 13	09	
	16.	" "		103 88		
	23.	" "		118 75		
	25.	" "		162 52		
	27.	" "		121 75		
Dec.	9.	" "		38		
	12.	" "		81 78		
	14.	" "		54 83		
				7,993 46	72 90	
				6,521 66		

Sep.	29.	By cash	75	193 70	3 21	
Oct.	13.	" "	61	75	1 01	
	16.	" "	58	79 80	1 02	
	18.	" "	56	525	6 52	
	20.	" mdse	51	71 72	84	
	24.	" cash	50	203 13	2 24	
	26.	" "	48	250	2 66	
	"	" salt	48	2	1	
Nov.	1.	" soda	43	2 80	2	
	3.	" sugar	41	43 25	40	
	18.	" hams	26	25 20	14	
	20.	" error in inv. 8th		20	"	
	14.	" balance		6,521 66	54 83	
				7,993 46	72 90	

4
24
39
35
21
51

1 74 due me.

87 Folio 669. MEMPHIS, *Dec.* 14, 1882.

Henry Warten, cotton ac., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

Oct.	3.	To cash ex.....	71	500	7 88
	6.	" cash s. d. H. Winters & Co.....	68	307 01	4 78
	12.	" cash s. d. H. Winters & Co.....	62	200	2 75
	14.	" cash s. d. Grubbs, K. & Co.....	60	35 17	48
	16.	" cash s. d. Phillips, K. & Co....	58	12 60	16
	"	" cash s. d. Chew, Charley & Co...	58	13 07	16
	20.	" cash s. d. Pepton Mills	54	171 15	2 04
	30.	" cash s. d. express	44	1,000	9 77
Nov.	1.	" cash s. d. Bamberger, B. & Co.	43	1,674 18	16 00
	1.	" cash s. d. Easton & Coffey.....	43	422 38	4 03
	1.	" cash s. d. Sanders & R.....	43	91 90	86
	1.	" cash s. d. R. B. Mason & Co.....	43	50	48
	3.	" cash p'r J. E. Logwood.....	42	350	3 26
	"	" cash s. d. J. H. Ramsay....	42	24	22
	"	" cash express & tel.....	42	1,000 40	9 32
	3.	" cash s. d. Nordyke & Co.....	41	656 21	5 06
	4.	" cash s. d. I. H. Raney & Co.....	40	115 50	1 01
	"	" cash s. d. Grubbs & Co.....	40	20	17
	6.	" cash s. d. Chilton & Co.....	38	97 81	80
	"	" cash s. d. Ellas, May & Co.....	38	110 01	92
	8.	" cash s. d. No. 21..	36	32 50	25
	"	" " " " 23..	36	50	40
	"	" " " " 26..	36	17 92	14
	9.	" " " " 31..	35	370 10	2 87
	11.	" " " " 32..	33	21 17	16
	13.	" " express... ..	31	1,000	6 88
	15.	" " s. d. No. 33..	29	1,000	6 44
	"	" " " " 35..	29	11 11	06
	"	" " " " 36..	29	148 97	95
	16.	" " " " 34..	28	11	06
	18.	" " " " 37..	26	1,000	5 77
	20.	" " " " 38..	24	113 54	60
	22.	" " " " 41..	22	15 90	07
	"	" " " " 42..	22	752 66	3 67
	23.	" " " " 40..	21	89 82	41
Dec.	1.	" " " " 43..	13	30	08
	4.	" " " " 45..	10	29 58	06
	5.	" " express.....	9	1,000	2 00
	6.	" " s. d. No. 46..	8	14 50	02
	"	" " " " 49..	8	17 78	02
	"	" " express.....	8	2,000	3 55
	7.	" " s. d. No. 44..	7	81 25	12
	"	" " " " 50..	7	28 00	04
	"	" " 47..	7	90 65	13
		Forwarded.....		14,787 84	104 90

Oct.	6.	By 2 b. c.....	68	100 99	1 52
	7.	" 6 "	67	300 82	4 46
	"	" 1 "	67	50 45	74
	10.	" 3 "	64	162 96	2 31
	14.	" 10 "	60	531 47	7 08
	"	" 1 "	60	52 85	70
	18.	" 1 "	56	46 44	57
	"	" 3 "	56	161 02	2 00
	20.	" 4 "	54	197 95	2 36
	25.	" 16 "	49	793 10	8 63
	"	" 6 "	49	277 68	3 01
	27.	" 1 "	47	46 27	48
	"	" 1 "	47	52 77	53
Nov.	1.	" 3 "	43	135 60	1 29
	2.	" 1 "	42	47 61	43
	"	" 1 "	42	43 98	41
Oct.	28.	" 4 "	46	166 14	1 69
Nov.	2.	" 6 "	42	272 28	2 53
	4.	" 1 "	40	56 09	49
	6.	" 4 "	38	183 30	1 54
	7.	" 8 "	37	363 84	2 98
	6.	" 16 "	38	632 33	5 33
	9.	" 2 "	35	97 27	75
	13.	" 4 "	31	198 51	1 36
	9.	" 6 "	35	273 47	2 12
	10.	" 36 "	34	1,682 47	12 70
	15.	" 1 "	29	41 59	26
	18.	" 21 "	26	907 40	5 24
	15.	" 6 "	21	235 67	1 51
	18.	" 18 "	26	845 27	4 88
	23.	" 12 "	21	539 54	2 51
	18.	" 5 "	26	232 29	1 33
	25.	" 12 "	19	538 19	2 26
	23.	" 23 "	21	1,010 63	2 30
		Forwarded.....		11,278 24	88 30

88 Folio 669. MEMPHIS, *Dec.* 14, 1882.

Henry Warten, cotton ac. contin'd, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

		Am't forward			14,787	84		00
Dec.	7.	To cash	s. d. No.	48..	7	9	40	01
	9.	" "	" "	51..	5	90	02	09
	"	" "	" "	52..	3	284	58	32
	11.	" "	express		2	2,000		1 32
	13.	" "	s. d. No.	56..	1	32	69	0
	"	" "	" "	58..	1	391	30	8
	"	" "	" "	59..	1	23	45	0
	"	" "	express		1	2,000	00	44
						19,619	28	0 00
Dec.	14.	To balance				8,341	04	

	Am't forward		11,278	24
Dec.	14. Balance		8,341	04
			19,619	28 00

347 rec'd.
245 sold & sales ren'd.
102 b. c. on hand.

O K. V.

89 Folio 671. MEMPHIS, *Jan'y* 31, 1883.

Henry Warten, Athens, mdz. ac., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Dec.	14. To balance		6,521	66	66 56
	" " mdse		111		40
	15. " "		46	46	16
	18. " "		24	25	05
	19. " "		155	41	37
	21. " "		30	50	05
	22. " "		83	45	14
	27. " "		177	30	11
	28. " "		43	31	0
Jan.	3. " 3 "		22	75	
	" " 3 "		60	50	
	6. " 6 "		87	08	
	13. " 13 "		111	80	
	16. " 16 "		251	50	
	22. " 22 "		73	49	
	" " 22 "		106	37	
	27. " 27 "		430	37	
	29. " 29 "		39		
	31. " interest		67	39	
			8,442	59	
Jan'y	31. To balance		8,213	88	
Feb'y	1. " cash		1,000		

Memorandum:

Grocery	8,213	88
Cotton	10,209	28
	18,422	16
	1,950	00
	16,472	16
	1,000	
	17,472	16

Jan.	22. By cash		223	78 44
	23. " mdse		4	93 01
	31. " balance		8,213	88 67 39
		2		
		4		
		12		
		32		
		89		
		36		
		52		
		2 58		
		25		
		5 10 due me.		
			8,442	59
Feb'y	1. By drafts		1,950	

90 Folio 671. MEMPHIS, *March* 28, 1883.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Jan.	31. To balance	57	8,213	88	104	00	
Feb'y	5. " mdse	23	132	50		67	
	6. " "	22	132	50		64	
	8. " "	20	2,577	06	11	64	
	16. " "	12	40			10	
	21. " "	7	90	46		13	
	28. " "		614	44			
M'ch	2. " "		2,462	46			
	7. " "		139	95			
	28. " interest		91	64			
			14,494	89	117	18	

Feb'y	1. By cash	57	1,950		24	69
	" mdse	30	5			03
M'ch	12. cash	16	200			70
"	20, 19. mdse	9	60	42		12
	28. " balance		12,279	47	91	64
		2 20				
		48				
		2 68 due me.				
			14,494	89	117	18

91 Folio 655. MEMPHIS, *Sept.* 12, 1883.

Henry Warten, cotton ac., Athens, in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Apr.	2.	To f'g't 1 b. c, "K"...	160		2		06	Mar.	28.	By balance.....	164	527	04	19	20
	5.	" cash s. d. No. 114..	157	25	40		87		"	" 9 b. c.....	164	325	75	11	84
	6.	" " " " " 117..	156	57	46	1	97		24.	" 13	168	453	93	16	91
	7.	" " " " " 113..	155	18	08		61		"	" 1	168	37	52	1	37
	"	" cotton error.....	155	8	12		27		30.	" 5	162	170	57	6	12
	"	" " "	155	85	55	2	92		"	" 3	162	122	76	4	40
	9.	" cash s. d. No. 115..	153	11	27		36	Ap'l	2.	" 2	160	68	07	2	41
	10.	" " " " " 116..	152	56	21	1	88		3.	" 1	159	39	84	1	41
	17.	" " " " " 118..	144	173	20	5	60		2.	" 2	160	65	68	2	30
	25.	" " " " " 119..	137	564		17	16		12.	" 7	150	226	03	7	52
	28.	" " Herman							13.	" 6	149	253	65	8	37
		Wintner..	134	112	50	3	32		"	" 22	149	902	50	29	86
May	17.	" " s. d. No. 120..	115	5	55		12		19.	" 2	143	68	10	2	16
June	9.	" " " " " 121..	93	21	45		43		21.	" 4	133	103	40	3	15
	"	" " " " " 122..	93	500		10	33		25.	" 3	137	116	85	3	53
	13.	" " " " " 124..	89	33	42		65		"	" 4	137	134	96	4	07
	14.	" " " " " 125..	88	41			80		"	" 8	137	277	36	8	43
	18.	" " " " " 123..	84	29	59		86		27.	" 7	135	271	98	8	16
	23.	" " " " " 126..	79	25	02		43		"	" 3	135	111	62	3	32
Aug.	8.	" " " " " 127..	34	1,800		13	60		"	" 8	135	350	86	10	49
	"	" " " " " 128..	34	35			26		30.	" 2	132	82	28	2	40
	9.	" " " " " 129..	33	21	45		16	May	11.	" 5	121	194	53	5	21
	13.	" " " " " 130..	29	30	60		20	June	1.	" 2	101	39	50		87
	"	" " " " " 131..	29	78			49		23.	" 8	79	351	10	6	16
	15.	" " " " " 132..	27	37	12		21		25.	" 2 light....	77	30	04		51
Sept.	12.	" balance.....		2,537	80	109	69	July	11.	" 4	61	140	07	1	89
									"	" 1	61	40	65		53
								Aug.	2.	" 1	40	44	20		20
									22.	" 1	20	38	73		16
								Sept.	12.	" ½ % commissions on 1,018 b. c.....		610	53		
									"	" " interest.....		109	69		
				6,309	79	172	95					6,309	79	172	95
Sept.	12.	To H. Warten.....		2,537	80			Sept.	12.	By balance.....		2,537	80		

O K. V.

92 Folio 646. MEMPHIS, *Jan'y* 31*st*, 1883.

Henry Warten, Athens, Ala., cotton ac., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Dec.	14.	To balance.....	46	8,341	04	85	35	Dec.	15.	By 31 b. c.....	53	1,331	55	16	25
	"	" cash s. d. No. 57.	46	13	75		12		19.	" 14 "	41	642	54	5	85
	"	" " " " 60.	46	70	73		72		13.	" 4 "	47	178	82	1	85
	"	" " by express	46	2,002	50	20	44		12.	" 7 "	48	310	20	3	30
	16.	" " s. d. No. 54.	44	129	30	1	25		20.	" 2 "	40	66	61		58
	"	" " " " 55.	44	3			02	Jan'y	5.	" cash Ezell.....	25	350		1	94
	"	" " " " 61.	44	20			20	Dec.	29.	" 2 "	31	93	67		64
	"	" " " " 62.	44	169	36	1	65	Jan.	12.	" 6 "	18	241	72		96
	18.	" " by express	42	2,002	50	18	66		17.	" 28 "	13	1,271	84	3	68
	"	" " s. d. No. 64.	42	213	76	1	98		"	" 42 "	13	1,680	87	4	85
	20.	" " " " 65.	40	20	50		18		20.	" 8 "	10	371	17		82
	22.	" " ex..	38	2,000		16	88		"	" 1 "	10	39	65		09
	23.	" " by J. E. L..	37	175		1	44		"	" 105 "	10	4,684	22	10	40
	26.	" " s. d. No. 63.	34	137	72	1	04		23.	" 8 "	7	308	17		48
	28.	" " " " 66.	32	2,005	77	14	21		31.	" balance.....	...	10,209	28	126	81
Jan'y	2.	" " " " 67.	28	37	05		22								
	"	" " " " 69.	28	200		1	24								
	"	" " " " 71.	28	33	30		20								
	3.	" " by J. E. L..	27	600		3	60								
	"	" " s. d. No.	68. 27	325	47	1	94								
	"	" " " " 70.	27	115	93		68								
	4.	" " " " 74.	26	30	14		17								
	5.	" " " " 72.	25	469	95	2	60								
	"	" " " " 73.	25	152	46		84								
	"	" " " " 76.	25	17	70		09								
	10.	" " " " 75.	20	28	75		12								
	15.	" " " " 81.	15	21	85		06								
	"	" " " " 82.	15	20	91		06								
	18.	" " " " 79.	12	137	64		36								
	22.	" " " " 78.	8	597	44	1	05								
	"	" " " " 83.	8	400			70								

	24.	"	"	"	"	85. 6	19 95		02
	"	"	"	"	"	86. 6	35 00		04
	25.	"	"	"	"	84. 5	4 97		0
	"	"	"	"	"	87. 5	14 75		1
	"	"	"	"	"	88. 5	44 50		4
	26.	"	"	"	"	89. 4	165		14
	29.	"	cash by J. E. L.			1	440		18
	31.	"	"	"		91. ...	63		
	"	"	"	J. E. L. —.		...	86 75		
	"	"	"	"		93. ...	28 60		
	"	"	interest			...	126 81		
							21,780 31		178 50
Jan.	31.	To balance.....					10,209 28		

O K. V.

758
501

257 b. c. on hand.

								21,780 31	178 50

93 Folio 646. MEMPHIS, *March* 28, 1883.

Henry Warten, Athens, Ala., cotton ac., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

Jan.	31.	To balance.....				57	10,209 28	129 30	
Feb'y	1.	"	cash s. d. No. 92.			57	127 51	1 60	
	"	"	ex. & tel...			57	1,000 60	12 66	
	2.	"	s. d. No. 95.			56	300	3 72	
	3.	"	"	"	"	94. 55	204	2 48	
	"	"	"	"	"	96. 55	500	6 10	
	5.	"	"	"	"	80. 53	46 90	56	
	9.	"	"	"	"	97. 49	24 35	25	
	"	"	"	"	"	98. 49	110 62	1 20	
	10.	"	"	"	"	99. 48	18	19	
	16.	"	"	ex. & tel....		42	1,000 30	9 32	
	19.	"	"	s. d. No.		100 39	108 91	93	
	"	"	"	"	"	101 39	5	04	
	"	"	"	ex.....		39	1,000	8 66	
	26.	"	"	s. d. No.		102 32	64 11	44	
	"	"	"	"	"	103 32	9	06	
Mar.	2.	"	"	"	"	104 26	45 94	25	
	"	"	"	"	"	105 26	656 64	3 78	
	3.	"	"	"	"	106 25	7 50	03	
	7.	"	"	diff. in 2 b.c.		21	6 80	03	
	9.	"	"	s. d. No.		107 19	50	20	
	10.					109 18	52 62	20	
	"					110 18	19 75	07	
Mar.	16.					108 12	80 07	20	
	28.	"	interest.....			...	29 62		
	"	"	balance...			...	527 04		
							16,204 56	182 27	
Mar.	28.	To balance on mdse. as rend.....					12,279 47		

O K. V.

Jan.	25.	By	1 b. c.....			63	48 95		68
	29.	"	1	"	.....	59	39 23		50
	"	"	11	"	.....	59	454 99		5 95
	"	"	51	"	.....	59	2,332 01		30 57
Feb'y	7.	"	4	"	.....	51	145 82		1 64
	"	"	12	"	.....	51	458 10		5 18
	"	"	1	"	.....	51	36 97		40
	"	"	35	"	.....	51	1,593 68		18 05
	14.	"	2	"	.....	44	95 55		92
	"	"	4	"	.....	44	164 54		1 60
	"	"	1	"	.....	44	34 37		33
	"	"	1	"	.....	44	33 57		32
	"	"	1	"	.....	44	44 22		42
	17.	"	cotton error..			41	5 40		04
x	"	"	137 b. c.....			41	5,969 75		54 38
	"	"	1	"	.....	41	44 88		41
	24.	"	3	"	.....	34	106 36		80
	24.	"	2	"	.....	34	99 17		74
	"	"	39	"	.....	34	1,638 52		12 37
	"	"	9	"	.....	34	365 25		2 75
	28.	"	8	"	.....	30	299 46		2 00
M'ch	1.	"	6	"	.....	27	244 98		1 46
	"	"	4	"	.....	27	143 43		85
	"	"	35	"	.....	27	1,358 41		8 15
	"	"	7	"	.....	27	280 40		1 68
	12.	"	1	"	.....	16	43 30		16
	"	"	1	"	.....	16	47 57		16
	19.	"	2	"	.....	9	75 68		14
									29 62
							16,204 56		182 27
M'ch	28.	Balance.....					527 04		

979
883

96 b. c. on hand.

94 Folio 657. MEMPHIS, *Sept.* 12, 1883.

Henry Warten, Esq., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

M'ch	27.	To balance.....				165	12,279 47	450 22	
	"	"	mdse.....			135	71 65	2 12	
Ap'l	2.	"	"	.....		130	38 77	1 12	
	4.	"	"	.....		128	27 29	76	
	11.	"	"	.....		121	52 19	1 39	
	18.	"	"	.....		114	297 58	7 52	
	25.	"	"	.....		107	52 92	1 23	
	21.	"	"	.....		111	19 30	46	
May	9.	"	"	.....		91	66 70	1 32	
	18.	"	"	.....		84	107 31	2 00	
	25.	"	"	.....		77	95 35	1 62	
	26.	"	"	.....		76	274 81	4 64	

Mar.	31.	By	peas.....			161	27 35		96
Apr.	4.	"	cash			158	1,151 07	40 40	
	10.	"	"	.....		152	100	3 37	
	11.	"	"	.....		151	362	2 14	
	17.	"	"	.....		145	250	8 04	
			Sundry claims.						
	"	"	mdse.....			145	64 66	2 15	
May	21.	"	cash.....			111	197 53	4 85	
	31.	"	"	.....		101	425	9 53	
June	2.	"	"	.....		120	214 58	4 75	
	4.	"	"	.....		98	250	5 44	
	7.	"	"	.....		95	34 70	72	

	" " "	76	245	74	5	82
	28. " "	74	5	35		08
June	1. " "	71	42	75		65
	11. " "	61	205	18	2	77
	16. " "	56	72	60		89
	" " "	56	92		1	14
July	6. " "	36	450	77	3	60
	9. " "	33	146	87	1	06
	18. " "	24	379	24	2	01
	23. " "	19	37	53		16
Aug.	9. " "	3	156	48		10
	11. " "		210	82		
	13. " "		85	47		
	14. " "		228	45		
	15. " "		274	50		
	16. " "		248	25		
	22. " "		160	26		
	31. " "		208	65		
Sept.	6. " "		70	58		
	12. " interest.....		387	31		
			17,192	14	492	68
Sept.	12. To balance		13,453	27		
			13,453	27		
Sept.	12. To balance		10,915	47		

	6. " peas.....	96	70	78	1	48
	11. " cash.....	91	500		10	10
	" " sardines & b	91	47	50		94
	16. " overcharge on.....	86	1	50		03
	21. " peaches.....	81	3	60		07
July	6. " blu- & sacks.	66	14	48		20
	30. " cash.....	42	14	40		12
Aug.	2. " horse shoe nails.....	40	9			08
	18. " bags	24		72		
Sept.	12. " balance.....		13,453	27	387	31
	10					
	18					
	22					
	35					
	87					
	38					
	2 10 due me.					
			17,192	14	492	68
Sept.	12. By H'y Warten's cot. ac.....		2,537	80		
	" " balance.....		10,915	47		
			13,453	27		

387 31
109 69

277 62

95 Folio 657. MEMPHIS, *Febr'y* 20, 1884.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Sept.	12. To balance..... 158	10,915	47	383	22	
	14. " mdse..... 126	140	09	3	92	
	19. " " 121	245		6	58	
	21. " " 119	95	12	2	51	
	" " " 119	329	94	8	48	
	24. " " 116	131	65	3	37	
	25. " " 115	1,188	63	30	35	
	26. " " 114	179	20	4	52	
Oct.	2. " " 108	130	69	3	12	
	5. " " 105	138	75	3	21	
	" " " 105	1	90		04	
	6. " " 104	147	24	3	39	
	13. " " 97	494	25	10	65	
	16. " " 94	88	88	1	84	
	17. " " 93	78	22	1	60	
	18. " " 92	119	50	2	43	
	23. " " 87	145	06	2	80	
	" " " 87	387	60	7	48	
	24. " " 86	128	37	2	44	
	26. " " 84	119	50	2	24	
	" " " 84	167	70	3	11	
	27. " " 83	220	09	4	05	
	" " " 83	277	92	5	10	
	31. " " 79	176	25	3	08	
	" " " 79	91	30	1	60	
Nov.	1. " " 78	68	25	1	17	
	5. " " 75	147	25	2	44	
	" " " 75	415	52	6	91	
	8. " " 72	46	95		75	
	9. " " 71	293	26	4	61	
	16. " " 64	108		1	53	
	20. " " 60	100	88	1	32	
	22. " " 58	65	63		83	
	27. " " 53	219	18	2	57	
	29. " " 51	147		1	66	
	" " " 51	19	75		20	
Dec.	7. " " 43	69	50		65	
	8. " " 42	114	35	1	06	
	13. " " 37	69	50		56	
	17. " " 33	245	66	1	79	
	24. " " 26	315	89	1	81	
	27. " " 23	315	82	1	60	

Sept.	13. By cash..... 157	217	19	7	56	
	15. " " 155	202	90	6	99	
	18. " " 152	73		2	46	
Oct.	3. " tobacco..... 137	109	85	3	34	
	22. " salt..... 113	8			20	
	24. " cash..... 116	596	65	15	36	
	26. " " 114	2,500		63	33	
	31. " flour..... 109	139	38	3	36	
Nov.	14. " cash..... 96	264	20	5	63	
	17. " " on salt.. 93	14	40		28	
	20. " mdse..... 90		49		"	
Jan'y	12. " cash..... 33	2,000		16	89	
	19. " " 31	1,749	25	12	05	
	21. " " 29	412	80	2	65	
	23. " horseshoes.. 27	6			03	
Feb'y	8. " cash..... 12	24	91		06	
	20. " balance	13,427	20	392	68	

'84.										
Jan.	5.	"	"	.. ..	15		3		0	
	15.	"	"	.....	5		260	46	28	
	23.	"	"	.....	3	...	369	38		25
Feb'y	2.	"	"	.....	12	....	679	76		1 81
	6.	"	"	.....	16	....	1,099	73		3 92
	19.	"	"	.....	29	....	49	50		32
	20.	"	interest.....				392	68		
							21,746	22	532 87	6 30 due me.
Feb'y	20.	To balance.....					13,427	20		
							11,732	41		
							25,159	61		
							11	88	dif'ce.	
							25,147	73		

											21,746	22	532 87

96 Folio 655. MEMPHIS, *Febr'y 20th*, 1884.

1.

Henry Warten, cotton ac., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers & cotton factors, No. 256 & 258 Front street.

Sept.	17.	To cash, No. 133....	153	95	55	3	22	Oct.	4.	By cash.....	136	628	15	18 97
	19.	" " ex..... ..	151	1,000		33	55			(58)				
	21.	" " note to H.							"	" 52 b. c.....	136	2,758	57	83 34
		Bros....	144	223	96	7	74		6.	" 5 "	134	229	25	6 81
	24.	" " Logwood	146	300		9	72		11.	" cash	129	298	54	8 53
	26.	" " No. 134...	144	300		9	60		"	" 19 b. c.....	129	937	18	26 85
	"	" " " 135...	144	250		8	00		"	" 6 "	129	293	27	8 40
	27.	" " ex. & tel...	143	1,000	50	31	77		"	" 3 "	129	141	15	4 04
	29.	" " No. 136....	141	49		1	53		13.	" 1 "	127	34	72	98
	"	" " " 137...	141	7			21		20.	" 1 "	120	39		1 04
	"	" " " 138...	141	43	75	1	37		23.	" 91 "	117	4,273	70	111 10
	"	" " " 139...	141	4	02		12		27.	" 1 "	113	43	50	1 08
Oct.	1.	" " express..	139	1,000		30	89	Nov.	1.	" 9 "	109	432	02	10 46
	2.	" " J. E. L....	138	146		4	48		"	" 12 "	109	547	34	13 24
	"	" " No. 140...	138	150		4	60		7.	" 75 "	103	3,290	78	75 30
	3.	" " ex	137	1,000		30	44		9.	" 71 "	101	3,041	31	68 25
	"	" " tel. & ex. ch'g's..	136	2	40		05			(73)				
	4.	" " ex. & tel..	136	2,000	50	60	44		"	" 75 "	101	3,320	75	74 53
	8.	" " No. 143...	132	6			17		14.	" 36 "	96	1,595	47	34 02
	"	" " " 144...	132	4	85		11		"	" 35 "	96	1,511	52	32 22
	"	" " " 146...	132	600		17	60		"	" 4 "	96	165	13	3 52
	10.	" " " 145...	130	187		5	40		20.	" 5 "	90	225	76	4 49
	"	" " " 147...	130	184	59	5	34		"	" 4 "	90	197	87	3 92
	"	" " " 148...	130	40	80	1	15		"	" 55 "	90	2,308	92	46 16
	"	" " ex. & tel..	130	1,000	50	28	88		"	" 28 "	90	1,340	41	26 80
	11.	" " ex.....	129	1,000		28	66		30.	" 31 "	80	1,393	05	24 76
	12.	" " No. 141...	128	10			28		"	" 19 "	80	858	51	15 24
	"	" " ex.....	128	2,000		56	88		"	" 4 "	80	175	75	3 10
	15.	" " No. 149...	125	27	70		75	Dec.	4.	" 5 "	76	217	53	3 68
	"	" " " 150.....	125	19	80		56		"	" 4 "	76	171	10	2 89
	17.	" " " 151.....	123	256	71	6	99		"	" 1 "	76	52	60	94
	"	" " " 152.....	123	337	66	9	21		"	" 8 "	76	355	90	6 00
	18.	" " " 153.....	122	30	99		84		12.	" 1 "	68	51	27	76
	19.	" " ex.....	121	1,000		26	89		22.	" 16 "	58	671	68	8 65
	"	" " No. 155...	120	100		2	68		22.	" 1 "	58	44	56	56
	22.	" " " 154.....	120	73	11	1	94		24.	" 1 "	56	40	73	49
	"	" " " 156.....		15	35		40		"	" 11 "	56	505	10	6 28
	26.	" " ex. & tel..	114	1,000	50	25	34		26.	" 8 "	54	334	50	4 00
	30.	" " ex. & tel..	110	2,000	75	48	89		"	" cotton error.....	54	9	75	10
	31.	" " No. 158...	109	66	31				27.	" 12 "	53	481		5 66
	"	" " " 159.....	109	68					"	" 7 "	53	267	23	3 14
	"	" " " 160.....	109	7	65				"	" 2 "	53	79	57	92
Feb'y	2.	" " " 157.....	108	33	40				29.	" 9 "	51	398	64	4 50
	"	" " ex.....	108	2,000				Jan'y	1.	" 20 "	49	828	40	9 01
	3.	" " No. 161...	107	300					4.	" 4 "	46	177	17	1 80
		Forwarded.....		19,954	35	566	04		"	" 55 "	46	2,362	36	24 14
										Forwarded.....		37,131	01	790 67

97 Folio 656. MEMPHIS, *Feb'y* 20, 1884.

2.

Henry Warten, cotton ac., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers & cotton factors, Nos. 256 and 258 Front street.

		Am't forward.....		19,954 35	566 04	
Nov.	5.	To cash, No. 162.....	105	501 61	11 69	
	"	" " 163.....	105	940 47	21 93	
	"	" " 165.....	105	1,250 06	29 16	
	6.	" " 142.....	104	1,000	23 10	
	7.	" " 164.....	103	359 55	8 21	
	"	" " 166.....	103	206 94	4 72	
	"	" " 167.....	103	18 15	41	
	"	" " 168.....	103	59	1 34	
	8.	" " 170.....	102	1,000	22 66	
	10.	" " 171.....	100	3 82	09	
	"	" " 173.....	100	100	2 21	
	12.*	" " 172.....	98	147 87	3 20	
	"	" " 174.....	98	97 30	2 11	
	"	" " 175.....	98	62 62	1 34	
	"	" " 176.....	98	87 07	1 88	
	13.	" " 169.....	97	44 62	94	
	15.	" " ex. & tel...	95	2,000 30	42 21	
	16.	" " No 177.....	94	572 53	11 94	
	19.	" " 178.....	91	2,865 44	57 93	
	"	" " 179.....	91	100	2 01	
	19.	" " 180.....	91	450	9 09	
	20.	" " exeg. on silver.....	90	1 90	4	
	24.	" " B., Bloom & Co.....	86	2,030	38 78	
	26.	" " No. 181.....	84	83 80	1 54	
Dec.	3.	" " on ac.....	77	2,000	36 89	
	"	" " No. 182.....	77	97 28	1 65	
	5.	" " W. Glenn & Son.....	75	218	3 72	
	"	" " ex. & tel....	75	1,000 30	16 66	
	"	" " " "	75	1,000 50	16 44	
	7.	" " F. H. Leggett & Co.	74	126 33	2	
	11.	" " ex. & tel....	69	2,000 50	30 66	
	12.	" " No. 185	68	65 50	97	
	14.	" " " 186.....	66	72 25	1 08	
	"	" " ex. & tel....	66	2,000 50	29 32	
	"	" " No. 189	66	603 89	8 84	
	15.	" " 188.....	65	595 77	8 59	
	"	" " tel.....	65	35	0	
	17.	" " No. 190.....	63	98 55	1 37	
	"	" " ex. & tel....	63	2,000 50	28	
	18.	" " No. 187.....	62	210 66	2 89	
	19.	" " " 191	61	2,000	27 10	
	28.	" " " 192.....	52	257 88	2 97	
	"	" " " 193.....	52	66 50	76	
		Forwarded.....		48,352 66	1,084 48	

		Am't bro't forward.....		37,131 01	790 67	
Jan.	4.	By 6 b. c.....	46	235 15	2 40	
	"	" 6 "	46	206 32	2 10	
	8.	" 14 "	42	559 53	5 21	
	9.	" 11 "	41	473 90	4 30	
	"	" 62 "	41	2,681 07	24 42	
	10.	" 5 "	40	213 41	1 88	
	"	" 10 "	40	386 69	3 42	
	"	" 6 "	40	254 27	2 25	
	"	" 7 "	40	279 80	2 40	
	"	" 15 "	40	602 90	5 34	
	14.	" 42 "	36	1,830 90	14 67	
	"	" 1 "	36	46 77	37	
	"	" 6 "	36	237 60	1 89	
	"	" 6 "	36	230 80	1 84	
	"	" 17 "	36	714 40	5 71	
	19.	" 5 "	31	246 31	1 69	
	"	" error	31	2 70	01	
	"	" 5 b. c.....	31	266 78	1 84	
	21.	" 2 "	29	85 95	54	
	22.	" 16 "	28	642 01	4 00	
	25.	" cotton error.....	25	1	0	
	"	" 3 b. c.....	25	137 76	76	
	29.	" 1 "	21	52 40	24	
	31.	" 12 "	19	553 32	2 33	
Feb'y	1.	" 5 "	19	200 98	84	
	2.	" 1 "	18	49 58	19	
	5.	" 24 "	15	1,078 04	3 58	
	"	" 1 "	15	41 88	13	
	8.	" 11 "	12	457 26	1 21	
	12.	" 17 "	8	728 59	1 29	
	13.	" 10 "	7	422 77	65	
				51,051 85	888 22	

O K. U.

98 Folio 656. MEMPHIS, *Feb'y 20th*, 1884.

3.

Henry Warten, cotton ac., Athens, Ala., *to* acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

		Am't brought for.....		48,352 66	
Dec.	28.	To cash, 194.....	52	168 05	
	"	" " 195.....	52	1,557 82	
	"	" " 196.....	52	33 84	
	"	" " 197.....	52	125	
	"	" " 198.....	52	700	
	'84.				
Jan.	2.	" " 199.....	48	200	
	4.	" " 201.....	46	500	
	5.	" " 200.....	45	250	
	7.	" " 203.....	43	500	
	9.	" " 202.....	41	1,800 48	
	12.	" " 204.....	38	22 46	
	"	" " express-age.....	38	2 50	
	14.	" " 205.....	36	74	
	"	" " 206.....	36	58 09	
	"	" " 207.....	36	350	
	23.	" " express..	27	1,000	

		Amount bro't forward		51,051 85	888 22
Feb.	13.	By 8 b. c.....	7	343 01	52
	15.	" 32.....	5	1,369 63	1 50
	18.	" 1.....	2	41 08	1
	"	" cotton error..	2	6 42	0
	20.	To balance.....	1	11,732 41	288 25

	"	"	" 208.....	27	18
	"	"	" 210.....	27	68 38
	24.	"	" 211.....	26	8 34
	"	"	" 213.....	26	71 62
	26.	"	" 214.....	24	8 76
	28.	"	" 209.....	22	18 08
	29.	"	" 212.....	21	16 50
Feb'y	4.	"	" 215.....	16	14 17
	"	"	" 216.....	16	19 36
	"	"	" 217.....	16	50 25
	"	"	" 218.....	16	50
	"	"	" Bamberger, B. & Co.	16	3,000
	6.	"	" express..	14	1,000
	8.	"	" 219.....	12	3 70
	9.	"	" 220.....	11	29 86
	"	"	" 221.....	11	25 50
	"	"	" I. T. Tanner, 222.	11	500
	"	"	" I. L. Hill, 222.....	11	100
	12.	"	" 224.....	8	50 43
	13.	"	" Hinline Bro....	7	219 08
	16.	"	" 223.....	4	64 72
	18.	"	" expre-s..	2	1,000
	20.	"	interest.....		288 25
					64,544 40 1,178 50
Feb'y	20.	To balance			11,732 41

O K. V.

		64,544 40	1,178 50

(259 b. c. on hand.)

99 Folio 730. MEMPHIS, *April* 15, 1884.

Henry Warten, cot. ac., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

					11,732 41								
					7								
Feb'y	20.	To balance.....		55	11,725 41	143 29	Feb'y	19.	By 20 b. c.....	56	845 85	10 51
	"	"	cash s. d., 225–227.....	55	60 83	73		20.	" 46 "	55	2,144 65	26 20
	22.	"	" ex. & tel.	53	1,000 50	11 77		21.	" 38 "	54	1,478 65	17 74
	25.	"	" " "	50	2,000	22 21		*22.	" 34 "	53	1,466 30	13 26
	"	"	" No. 226...	50	38 88	43		25.	" 6 "	50	246 60	2 73
	27.	"	" F. E. Logwood...	48	567 50	6 04		27.	" 5 "	48	190 33	2 02
	28.	"	" ex. & tel.	47	1,000 50	10 40		28.	" 11 "	47	464 98	4 84
Mar.	13.	"	" No. 229...	32	6 50	4	M'ch	1.	" 34 "	44	1,570 08	15 34
	14.	"	" 228.....	31	161 95	1 12		5.	" 2 "	40	82 86	73
	17.	"	cot. error.....	28	4 87	2		7.	" 6 "	38	278 64	2 34
	19.	"	cash, 231.....	26	118 25	68		11.	" 39 "	34	1,691 85	12 77
	"		233.....	26	110 87	64		"	" 24 "	34	1,004 88	7 58
	20.		230.....	25	60	33		12.	" 9 "	33	345 31	2 52
	"		232.....	25	205 72	1 13		13.	" 10 "	32	375 14	2 66
	"		235.....	25	145	80		14.	" 4 "	31	149 72	1 02
	21.		234 & 236	24	561 15	2 99		17.	" 19 "	28	819 29	5 09
	27.		238.....	18	21	12		18.	" 26 "	27	1,217 97	7 30
	29.		Bamberger, B. & Co.....	16	1,272 69	4 50		"	" 7 "	27	340 56	2 04
	31.		237.....	14	36 84	11		20.	" 12 "	25	474 81	2 64
April	3.		Henle, B. & W.	12	222 62	59		21.	" 4 "	24	209 64	1 12
	7.		By Logwood..	8	175	30		25.	" 6 "	20	247 75	1 09
	11.		239.....	4	800	70		27.	" 20 "	18	834 21	3 33
	"		240.....	4	56 17	4		"	" 3 "	18	135 93	53
	"		241.....	4	300	26		"	" 27 "	18	1,120 66	4 48
	14.		242.....	1	38 52	0		28.	" 8 "	17	371 51	1 40
	15.	"	interest.....		52 51		April	1.	" 2 "	14	89 84	27
	"	"	balance.....		97 78			"	" 2 "	14	88 61	27
	"	"	A. A. Paton & Co.....		91 16			3.	" 10 "	12	467 78	1 24
								"	" 6 "	12	283 03	75
								"	" 11 "	12	488 10	1 30
								4.	" 4 "	11	191 75	46
								5.	" 6 "	10	247 88	54
								7.	" pickings b. c...	8	80	0
								9.	" 1 " ...	6	46 45	5
								12.	" 5 " ...	3	238 02	16
								"	" 17 " ...	3	691 79	45
												52 51
					20,942 22	209 28					20,942 22	209 28
							Ap'l	15.	By balance.....		97 78	

* Error, 1.00.
85 b. c. on hand.

100 Folio 640. MEMPHIS, *July 7th*, 1884.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Apr.	15.	To balance	52	15,040	86	116	00	Ap'l	19.	By tar	78	4	88	08
	22.	" mdse	15	52	94		17		26.	" lard	71	53	55	83
	23.	" "	14	431	69	1	33	May	8.	" cash	59	1,000		13 08
May	7.	" "		814	02			July	7.	" balance		13,862	69	103 51
	"	" "		16	25					" brooms		16	35	
June	4.	" "		561	66					" H. W., cot. ac		2,642	54	
July	3.	" "		529	99			O K. V. G. W. Y.						
	5.	" "		29										
	7.	" interest		103	51									
				17,579	92							17,579	92	
July	7.	To balance		13,862	60									

101 Folio 636. MEMPHIS, *July 7th*, 1884.

Henry Warten, cot. ac., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Ap'l	16.	To cash, 243 & 245	81	828	75	14	90	Ap'l	15.	By balance	82	97	78	1 78
	17.	" " 244–249	80	514	30	9	13		"	" 5 b. c	82	241	54	4 40
	18.	" " 246	79	53	44		94		17.	" 4 "	80	144	87	2 56
	25.	" " 248	72	15	85		25		19.	" 2 "	78	110	63	1 90
	30.	" " ex. & tel	67	1,000	90	14	89		"	" 2 "	78	96	60	1 66
May	3.	" " 249	64	200	22	2	84		"	" 12 "	78	632	34	10 96
	8.	" " expressage	59	1	25		02		"	" 4 "	78	204	85	3 53
	14.	" " 250	53	558	46	6	57		19.	" cot. error	78	1		1
	"	" 2 b. c., M'ch 12, '84	53	88	16	1	04		26.	" 2 "	71	74		1 16
	30.	" cash, 251	37	500	00	4	10		"	" 9 "	71	398	34	6 27
July	3.	" " tel., N. Y	4		60		0		"	" 1 "	71	37	14	58
	7.	" balance		2,642	54	12	93		29.	" 3 "	68	146	54	2 20
								May	3.	" 1 "	64	56	26	80
									5.	" 3 "	62	139	20	1 92
									6.	" 2 "	61	103	95	1 39
									13.	" 6 "	54	263	70	3 15
									"	" 9 "	54	381	83	4 57
									"	" 3 "	54	136	68	1 65
									"	" 1 "	54	50	18	60
									17.	" 3 "	50	141		1 56
									13.	" 5 "	54	231	90	2 88
									21.	" 7 "	46	311	22	3 17
									22.	" 2 "	45	74	65	73
									23.	" 1 "	44	44	87	44
									23.	" 1 "	44	59	83	57
									27.	" 1 "	40	44	27	40
									27	" 1 "	40	46	86	41
								June	4.	" 1 "	33	28	50	20
									6.	" 17 "	31	710	48	4 89
									"	" 1 "	31	34	95	24
									14.	" 3 "	23	147	34	74
									28.	" 5 "	9	149	78	29
								July	7.	" commission		1,046	46	
									"	interest		12	93	
				6,404	47	67	61					6,404	47	67 61
July	7.	Henry Warten, transf'd to mdse. ac		2,642	54			July	7.	" balance		2,642	54	
O K. W.								24 b. c. on hand.						

102 Folio 658. MEMPHIS, *April* 15, 1884.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Feb'y	20.	To balance	55	13,427	20	164	10	Feb'y	27.	By eggs	48	24	25	25
	27.	" mdse	18	1,464	49	4	95	M'ch	8.	" "	37	313	85	2 56
Mar.	5.	" "	10	322	32		72		10.	" J. & B. Lambert	35	2	25	01
	17.	" "		25					15.	" balance		15,040	86	166 95
Ap'l	15.	" interest		166	95							15,381	21	169 77
				15,381	21	169	77	O K. W.						
Ap'l	15.	To balance		15,040	86									

103 Folio 636. MEMPHIS, *Mar.* 18, 1885.

1.

Henry Warten, cot. ac., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Sept.	20.	Cash p'r ex	178	500		19	77	July	23.	1 b. c.	235	44		2	29
	26.	"	172	1,001	25	38	24	Aug.	1.	1 "	227	41		2	06
Oct.	2.	" s. d. 253-255	166	52	65	1	92		8.	2 "	220	92	10	4	49
	3.	" " 256& ex.	165	1,206	90	44	21		11.	Commission	217	15	58		76
	4.	" expressage on silver	164	350			14	Sept.	4.	1 b. c.	194	30	63	1	29
	6.	" {200 b. c. / Aug. fu- / tures.}	162	917	97	33	00	Oct.	2.	4 "	166	172	90	6	36
	"	" 254-260	162	180	60	6	48			" 12 "	166	523	25	19	29
	8.	" s. d. 257	160	87		3	08			4. 2 "	164	81	87	2	96
	9.	" express	159	1,004		35	46			6. 2 "	162	93	27	3	34
	10.	" 261	158	140		4	91			10. 17 "	158	726	06	25	48
	11.	" ex. & tel	157	980	50	34	18			11. 2 "	157	71	13	2	47
	13.	" 258, 259, 262, 265	155	213	86	7	33			14. 3 "	154	127	62	4	34
	14.	" express	154	1,000		34	21			" 41 "	154	1,771	25	60	60
	15.	" 263	153	100		3	40			15. 1 "	153	47	97	1	60
	16.	" 264 & ex	152	2,150	56	42	77			17. 3 "	151	124	13	4	16
	18.	" 266	150	400		13	32			" 19 "	151	824	56	27	68
	23.	" express	145	2,000		62	21			" 1 "	151	47	40	1	60
Nov.	3.	" Bamberger, S. & E	135	679	20	20	40			23. 2 "	145	88	90	2	86
	4.	" Bamberger, B., C	134	1,918	92	* 59	11	1.96 due me.			75c. due me.			*	
	8.	" Bloom, G. & Co.	130	560	09	16	17			" 38 "	145	1,623	97	53	08
	11.	" express	127	1,000		28	21			" 35 "	145	1,526		49	16
	15.	" W.W. Littlejohn	123	1,000		27	32			30. 32 "	138	1,313	66	40	20
	17.	" J. C. Vance	121	500		13	44	Nov.	1.	76 "	137	3,131	01	95	33
	"	" express & tel	121	2,000	60	53	77		3.	1 "	135	35	60	1	05
	18.	" s. d. 272	120	55	10	1	46			" 3 "	135	116	20	3	48
	19.	" 268, 269, 271	119	139	45	3	68			" 3 "	135	128	52	3	84
	20.	" 270, ex. & tel.	118	1,014	80	26	57			5. 14 "	133	571		16	87
	24.	" 273, 274, & ex., 2,000	114	2,443	75	61	88			" 2 "	133	82	27	2	42
	26.	" Huntsville b'k	112	2,165	18	53	88		6.	5 "	132	214	15	6	27
	28.	" 275, 276, 277, 279	110	629	43	15	61		7.	8 "	131	339	16	9	86
Dec.	1.	" 280, 281, 282, 284, 286, 287, 288, 289, & ex	107	2,943	90	69	97		10.	15 "	128	641	50	18	24
	3.	" 283, 285, B., B. & Co., & ex., 2,000	105	2,808	67	65	51		11.	2 "	127	87	50	2	44
	4.	" Henley, B. & W	104	714		16	49		11.	7 "	127	308	62	8	68
	"	" Bamberger, B., C	104	1,918	92	43	32			" 6 "	127	251	70	7	08
	"	" ex. & tel	104	2,000	50	46	22		12.	5 "	126	239	46	6	72
	5.	" 190, 191	103	1,452		33	23			" 5 "	126	224	16	6	27
	8.	" Bloom, G. & Co.	100	560	09	12	44		17.	16 "	121	671	42	18	04
	10.	" ex. & tel	98	2,000	50	43	55			" 23 " old	121	573	88	15	40
	12.	" Bamberger, B. & Co	96	1,285	25	27	40			" 4 " Vance	121	166	85	4	55
	"	" express & tel	96	1,000	30	* 23	32			17. 11 "	121	484	18	13	
	"	" our accept's	96	1,454	26	* 33	00	2.00 due me.							
	13.	" 299, 301	95	1,050		22	15			" 2 "	121	92	80	2	49
	15.	" 300, I., B. & G., & ex	93	2,098	79	43	56	2.00 due me.							
	"	" our acc'pt's	93	305	04	6	29		21.	1 "	117	50	10	1	29
										" 10 "	117	438	97	11	38
		Forwarded	47,637	53	1,282	37				" 3 "	117	134	45	3	48
										" 3 "	117	140	30	3	64
										Forwarded	18,511	05		577	95

O K. W.

104 Folio 639. MEMPHIS, *M'ch 18h*, 1885.

2.

Henry Warten, cotton ac. cont'd, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

		Amount br't forward.....		47,637 53	1,282 37		
		.75					
Dec.	17.	Cash, 30.30 by ex...	91	2,175	43 96		
	18.	" 298, 304, 307....	90	906 96	18 12		
	19.	" 305.....	89	46 01	90		
	24.	" 306, 308.....	84	43 01	80		
	30.	" 309, 310 & exp.	78	1,043 49	18 08		
'85.							
Jan'y	2.	" 312 & Rison, 143.70.....	76	201 10	3 39		
	3.	" Bamberger, C. & Co	75	688 44	11 46		
	5.	" Bamberger, B. & Co.....	73	2,344 61	38 01		
	9.	" Bamberger, G. & Co.....	69	560 09	8 58		
	12.	" 314 & 313.....	66	158 75	2 32		
	14.	" 316.....	64	36 63	52		
	16.	" 315, 318, 319...	62	669 45	9 21		
	17.	" 317.....	61	586 42	7 93		
65 10							
24 05							
89 15					*		
	22.	" 320, 321.....	56	89 15	1 10		
	26.	" 323, 326, 327, 328.	52	150 24	1 72		
	27.	" by express....	51	4,000	45 32		
	28.	" 329	50	5 73	6		
	31.	" 325, 332.....	47	227 04	2 36		
Feb'y	2.	" 324, 330, 331 & exp.....	46	1,554 22	15 87		
					*		
	6.	" 334, 335.....	42	62 43	32		
	9.	" 322, 336, 337...	39	73 59	64		
	11.	" 333.....	37	285 77	2 33		
	12.	" 338, 339.....	36	29 17	24		
	19.	" 340.....	29	127 77	82		
	23.	" 341, 342.....	25	200	1 10		
	26.	" 343, 344.....	22	38 85	18		
M'ch	6.	" 345, 347.....	12	243 50	65		
	9.	" 346.....	9	17 75	03		
	12.	note B., B. & Co.....	6	1,363 64	1 81		
	13.	349..	5	18 55	1		
	16.	350....	2	20 38			
O K. W.							
				65,605 27	1,520 21		

244

		Am't forward.....		18,511 05	577 95		
'84.							
Nov.	22.	5 b. c.....	116	229 47	5 89		
	"	1 " Vance.....	116	40	1 02		
	"	12 "	116	545 58	14 04		
	"	11 "	116	484 96	12 48		
	25.	2 "	113	79 15	1 98		
	26.	11 "	112	493 75	12 26		
	"	8 "	112	376 78	9 36		
	29.	2 "	109	93 23	2 25		
	"	Cotton error.....	109	1	2		
Dec.	1.	6 b. c.....	107	263 10	6 25		
	1.	6 " Vance.....	107	251 72	5 96		
	1.	15 "	107	665 90	15 80		
	1.	24 "	107	1,066 30	25 10		
30 cts.							
	1.	4 "	107	188 40	4 42		
	1.	2 "	107	92 13	2 18		
	1.	5 "	107	219 22	5 20		
	3.	45 "	105	2,028 53	47 31		
	"	7 " Vance.....	105	296 75	6 90		
	8.	4 " 2 Vance.....	100	146 28	3 24		
26 due you.							
	"	44 " 13 Vance...	100	2,024 26	44 96		
	"	1 "	100	52 58	1 17		
	10.	13 " 4 Vance.....	98	556 50	12 10		
	"	3 "	98	126 40	2 74		
	"	25 " 7 Vance.....	98	1,132 90	24 65		
	16.	64 " 8 Vance.....	92	2,831 26	57 87		
	"	4 "	92	191 05	3 90		
	12.	44 "	96	1,867	39 82		
	"	5 "	96	208 76	4 43		
	13.	10 "	95	450 15	9 49		
	"	5 " 2 Vance.....	95	217 55	4 57		
	17.	7 "	91	281 36	5 68		
	"	21 "	91	912 21	18 44		
	"	1 "	91	41 18	82		
	"	5 "	91	213 18	4 32		
	24.	21 "	84	679 91	18 27		
	"	2 "	84	107 22	2 00		
	"	5 "	84	239 73	4 55		
	"	18 " 1 Vance.....	84	783 29	14 61		
	27.	15 " 1 Vance.....	81	660 74	11 88		
	29.	3 "	79	132 70	2 32		
	"	3 "	79	132 11	2 32		
	"	4 "	79	187 65	3 28		
	"	4 "	79	174 27	3 05		
				40,577 26	1,056 85		

105 Folio 639. MEMPHIS, *M'ch* 18, 1885.

3rd.

Henry Warten, cot. acc't cont'd, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

		Am't bro't forward...		65,605 27	1,520 21		
M'ch	18.	Interest.....		108 46			
		Balance.....		2,574 39			
		Am't bro't forward..		40,577 26	1,056 85		
'85.							
Jan.	1.	14 b. c.....	77	658 96	11 25		
	2.	13 "	76	559 55	9 44		
	7.	12 "	71	582 45	9 17		
	"	40 "	71	1,729 22	27 28		
	7.	38 "	71	1,651 32	26 04		
	"	3 "	71	129 70	2 03		
	"	10 " 4 Vance.....	71	471 80	7 42		
	"	16 " 3 Vance.....	71	743 77	11 72		

	8.	210	"	.....	70	71	75	1	12	
	12.	206	"	.....	66	80	21	1	16	
	17.	201	"	.....	61	113	50	1	53	
	19.	129	"	.....	59	43	13		56	
	27.	121	"	.....	51	551	31	6	24	
'85.										
Jan.	3.	115	"	.....	45	847	55	8	46	
	7.	111	"	.....	41	60	49		54	
	12.	106	"	.....	36	284	25	4	67	
	24.	.....	"	.....	24	26	68		13	
		Forwarded				23,591	97	1,021	01	

Forwarded.....	9,638	28		169	53

O K. W.

107 Folio 640. MEMPHIS, *Mar.* 18, 1885.

2nd.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

'85.		Am't br't forw'd...			23,591	97	1,024	01		
Jan.	27.	Mdse.....		21		15	55		06	
	29.	"	.....	19		614	86	2	59	
Feb'y	4.	"	.....	14		19	63		05	
	"	"	.....	14		832	93	2	58	
	12.	"	.....	6		655	20		87	
M'ch	4.	"	.....			104	24			
	6.	"	.....			14	20			
	7.	"	.....			768	23			
	10.	"	.....			33	25			
	16.	"	.....			157				
	18.	Interest.....	.....			860	78			
					26,667	84	1,030	16		
Mar.	18.	Balance.....	.....		15,455	17				
		Less error, 30c.—								
		D'ft	320...	89 45						
		"	321...	89 15						
				30c.						

										*169 53
'85.		Am't bro't forward...			9,638	28				169 38
Mar.	18.	By H. W. cot. ac.....			2,574	09				
		" balance.....			15,455	17				860 78
	16.	Due me.....		37						
	18.	.....		6						
	19.	.....		3	26					
	22.	.....		17						
	28.	.....		97						
		Due me.....		4	83					
		" "	.....	25						
				5	08					
		103 b. c. on hand.								
		(114)								
		114 b. c.....		5,530	06					
		Rebate.....		930	83					

O K. W.

108 Folio 639. MEMPHIS, *May 23rd*, 1885.

Henry Warten, cotton acc't, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

'85.										
M'ch	18.	Cash, s. d. 348.....		65		52	50		76	
Apr.	11.	" Bamberger, B. & Co.		42		1,370	40	12	78	
	15.	" No. 351.....		38		90			76	
May	4.	" " 352.....		19		185			77	
	23.	Balance.....				4,885	65	3	60	
						6,586	55	18	67	
May	23.	Henry Warten.....				4,886	65			

Apr.	1.	1 b. c.....			52	26	40		27	
	10.	2 "			43	71	50		68	
	24.	1 "			29	31	93		20	
	27.	1 "	.....		26	29	26		16	
May	8.	17 "			15	773	35	2	57	
	"	87 "			15	4,111	80	13	70	
	12.	8 "			11	315	22		76	
	16.	5 "			7	217	89		33	
	23.	Commission.....			0	1,007	60		0	
	"	Interest.....				3	60			
						6,586	55	18	67	
May	23.	Balance.....				4,888	65			

O K. W.

109 Folio 640. MEMPHIS, *May* 23, 1885.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

M'ch	18.	Balance	65	15,455	17	221	22	M'ch	28.	Cash	55	763 64	9 32
	28.	Mdse	25	660	42	3	66	Ap'l	4.	"	49	275	3 00
Ap'l	7.	"	16	96	40		33		10.	"	43	200	1 90
	9.	"	14	11	95		3		17.	Interest	36	11 61	9
	10.	"	13	18	98		4		7.	Mdse.	6	40	207 28
	16.	"	7	151	39		24		23.	Balance		11,388 56	73
May	21.	28 "		119	06				"	H. W. cotton ac		4,888 65	5 20
	22.	29 "		807	21								
	23.	Interest		207	28								
				17,527	86	227	52					17,527 86	227 52
May	23.	Balance		11,388	56								

O K. W.

110 Folio 694. MEMPHIS, *June 5th*, 1885.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

'85.													
May	23.	Balance		11,388	56			June	5.	Note due Oct. 15, '85		4,127 10	29
		Interest on notes		414	89					" " Nov. 1, '85		2,069 77	
										" " Nov. 15, '85		2,076 45	
										" " Dec. 1, '85		2,083 10	
										" " Dec. 15, '85		1,383 77	
										Interest allowed		50 76	
										Mdse. rebate on meat, ⅛ on 500		12 50	
				11,803	45							11,803 45	

111 Folio 694. MEMPHIS, *Jan'y 12th*, 1886.

Henry Warten, Esq., Athens, in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

July	1.	Mdse	161	18	37		64	July	11.	Cash	181	5	20
	2.	"	160	44	82	1	60		"	Tobacco	181	42 90	1 68
	14.	"	148	719	23	23	64	Sept.	11.	Meat	121	3 92	10
	21.	"	141	157	43	4	91		19.	Mdse	112	5 50	12
Aug.	3.	"	129	186	30	5	32		25.	Bacon	107	8 61	18
	10.	"	122	21	75		57	Oct.	3.	Cash	99	113 29	2 59
	21.	"	111	94	50	2	31		10.	"	92	67 85	1 38
	22.	"	110	1,258	59	30	74		13.	"	89	750	14 83
Sept.	8.	"	94	4			8		14.	"	72	96 86	1 89
	9.	"	93	62	25	1	28		30.	Lard	42	34 53	54
	10.	"	92	8	65		16	Nov.	30.	Cash	41	1,000	9 32
	14.	"	88	38	87		73	Dec.	1.	"	35	22 25	20
	16.	"	86	947	50	18	09		7.	"	27	1,000	7 77
	23.	"	79	71	60	1	24		15.	"	12	824 03	4 94
	"	"	60	5	50		9		30.	"		60	16
Oct.	12.	"	58	44	55		58	'86.					
	14.	"	57	48	50		61	Jan.	12.	Balance		1,374 72	52 43
	15.	"	50	302	75	3	82						
	22.	"	41	19	50		20						
	31.	"	38	15	63		13						
Nov.	4.	"	24	144	63	1	21						
	18.	"	23	271	12	1	44						
	19.	"	17	27	70		13						
	25.	"	10	103			38						
Dec.	2.	"	3	184	97		41						
	9.	"		85	50		5						
	23.	"		82	50								
	24.	"		299									
Jan.	7.	"		93	32								
	12.	"		52	43								
				5,414	46	100	36					5,414 86	100 36
Jan'y	12.	Balance		1,374	12								

O K. W.

112 Folio 696. MEMPHIS, *Jan'y 12th*, 1886.

Henry Warten, cotton acc't, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers & cotton brokers, Nos. 256 & 258 Front street.

'85.														
June	24.	Cash, 353	198	50		2	20	Sept.	18.	5 b. c	114	205	19	5 20
July	11.	" 354, 355, 356	181	616	82	24	80		25.	1 "	107	39	72	92
	18.	" 357	174	150		5	80		"	2 "	107	80		1 89
	22.	" 358, 359, 360	170	188	40	7	09		28.	4 "	104	171	90	3 95
Sept.	14.	" by ex	118	1,000		26	21		38.	5 "	102	198	80	4 50
	18.	" " & tel	114	1,000	50	25	32	Oct.	3.	6 "	99	269	96	5 92
	21.	" 361	111	341	41	8	41		"	7 "	99	285	20	6 26
	23.	" 362	109	6			14		12.	3 "	90	122	06	2 44
	24.	" 363	108	632	30	15	16		20.	4 "	82	173	10	3 15
	25.	" 365	107	36	05		85		21.	14 "	81	615	37	11 06
	28.	" 364, 367	104	470	39	10	85		22.	2 "	80	93	40	1 64
Oct.	2.	" 368 & ex	100	1,007	50	22	38		"	26 "	80	1,104	40	19 62
	3.	" 366	99	17	29		36		23.	3 "	79	118	45	2 06
	5.	" 369	97	209		4	50		26.	2 "	76	84	01	1 41
	7.	" 372	95	195	54	4	11		28.	1 "	74	41	46	67
	8.	" 370, 371	94	190	95	4	00		30.	31 "	72	1,294	33	20 70
	10.	" 373, 374	92	149	20	3	04	Nov.	6.	18 "	66	745	30	10 92
	12.	" 375	90	10			20		"	17 "	66	708	85	10 38
	13.	" ex	89	1,000		19	77		9.	2 "	63	84	40	1 23
	16.	" B., Bloom & Co	86	1,500		28	65		"	1 "	63	42	40	58
	22.	" by ex	80	1,000		17	77		"	6 "	63	244	39	3 41
	23.	" 376, 377, 378, 379	79	166	42	2	91		16.	2 "	56	87		1 08
	26.	" by ex., 380	76	1,058	83	17	86		17.	2 "	55	88	93	1 08
	28.	" 381	74	300		4	92		21.	1 "	51	39	63	44
	29.	" 382	73	39	55		64		"	1 "	51	42	16	48
Nov.	3.	" ex	69	1,000		15	32		25.	1 "	47	40	98	42
	4.	" telegram	68	1	10		0		27.	1 "	45	32	72	33
	5.	" 385, 386, 387, 388, 389, 390, 393	67	924	05	13	75	Dec.	10.	3 "	32	109	85	76
	6.	" 383, 384, 385, & tel	66	348	65	5	10		12.	4 "	30	146	17	97
	7.	" 391, 396, & tel.	65	333	25	4	80							
	9.	" 392	63	494	13	6	91							
	10.	" ex	92	1,000		13	77							
	12.	" 394, 401	60	62	73		82							
	"	" 397, 399, 400	60	115	91	1	53							
	16.	" 402	56	2,356	65	29	31							
	17.	" 398	55	455	65	5	56							
	18.	" Moore, B. & Co	54	293	97	3	52							
	19.	" 406, 407	53	647	87	7	54							
	21.	" 404	51	371	50	4	20							
	23.	" 405, 408	49	503	19	5	47							
	24.	" ex. & tel	48	1,000	50	10	66							
	31.	" 411, ex., & tel.	45	1,188		11	88							
	28.	" 412	44	94			91							
	30.	" 413, 414, & dis.	42	2,545	01	23	74							
				25,072	31	422	74			Forwarded		7,314	13	123 47

O K. N.

113 Folio 696. 2. MEMPHIS, *July* 12, 1886.

Henry Warten, cotton ac., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

'85.														
Dec.	1.	Cash L. H. Grubb & Co	41	35	15		32	Jan.	6.	4 b. c		149	93	20
	"	" by ex. & tel	41	1,000	50	9	10		12.	Balance	34,806	85	393	83
	2.	" 415, 416, 418, & ex	40	1,389	66	12	34							
	3.	" 417, 420, & ex.	39	1,057	95	9	15							
	4.	" 419, 421	38	103	95		87							
	5.	" 423	37	42	50		34							
	7.	" 410, 424, 425, 426, & ex	35	1,300		10	10							
	9.	" 427	33	200		1	46							
	10.	" ex. & tel	32	1,000	50	7	10							
	11.	" 429, 434	31	200		1	37							
	14.	" 430, 431, 432, 435, 436, ex. & tel	28	2,284	06	14	20							
										Am't bro't forw'd	7,314	13	123	47

	15.	"	ex. & tel.....	27	1,000 50	6
	17.	"	B. L. Allen...	25	56	30
	18.	"	437, 438.....	24	561 11	2 99
	21.	"	439, 441, & ex..	21	2,673 78	12 46
	23.	"	443	19	250	1 05
	24.	"	Ben. Lee Allen.....	18	3 79	1
	28.	"	444, 446, & ex.	14	1,125	3 49
	29.	"	" 442 ...	13	160	45
	30.	"	445	12	50	12
	31.	"	448	11	25 88	5
'86.						
Jan.	2.	"	447	10	2 50	0
	6.	"	Bloom, G., T. & Co.....	6	529 06	70
	8.	"	450, 451, 451, 453....	4	529 50	46
	9.	"	454	3	200	12
	11.	"	452, 455.....	1	1,023 38	21
	12.	"	interest.....		393 83	
					42,270 91	517 50

				42,270 91	517 50
Jan.	12.	Balance.....	34,806 85		
		Notes.....	11,740 19		
		Mdse. ac.....	1,374 12		
			47,921 16		
O K. N.			79 68		
			47,841 48		

862 b. c. on hand.
To error..... 44 55
" " 15 63
" " Fis..... 10 00
" sundries 9 50
79 68

114 Folio 630. MEMPHIS, *July* 20, 1886.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers & cotton factors, No. 256 and 258 Front street.

Jan'y	12.	To balance	188	1,374 72	57 44	Jan'y	16.	By mdse.....	188	60 18	2 50
	25.	mdse.....	145	931 36	30		"	"	188	19 50	81
	26.	"	174	1,344 81	52		20.	"	180	71	02
Feb'y	23.	" c.....	117	1,392 08	36 19	Feb'y	5.	cash.....	165	672 91	24 67
	26.	"	114	25 50	64		8.	"	162	56 36	2 01
	27.	"	113	16 35	40		19.	"	151	1,300	43 62
M'ch	15.	" disc't....	125	1			23.	"	147	2,100	68 64
Apr.	10.	" c.....	101	417 80	9 36	M'ch	13.	"	127	105	2 44
	"	" 60 d.....	40	334 77	2 97		15.	"	125	341 25	9 47
	"	" c....	100	78 50	1 76	Ap'l	17.	mdse.....	93	65 83	1 36
	19.	" c.....	61	30 50	41		30.	cash.....	80	125 88	2 24
May	3.	"	47	32 53	33	May	1.	"	79	250	4 38
	11.	" c.....	60	344 69	5 28		3.	"	77	5	88
	18.	" c.....	62	308 58	4 24		21.	tob.....	59	76 44	99
June	8.	" c.....	42	289 09	2 69	June	4.	"	46	10 53	10
	10.	"	10	21	04	July	10.	cash.....	10	171 74	37
	28.	" c.....	22	470 69	2 29		20.	balance.....		2,650 96	41 54
July	8.	cash p'd f'g't.		6 05							
	14.	mdse.....		550 73							
	20.	interest		41 54							
				8,012 29	206 04					8,012 29	206 04
July	28.	To balance		2,650 96							
		" cot. ac.....		324 83							
				2,975 79		O. K. M.					

115 Folio 632. MEMPHIS, *Jul-* 20, 1886.

Henry Warten in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

Jan.	12.	To balance.....	188	34,806 85	1,454 10			(179)			
	19.	457.....	181	17	68	Jan.	6.	By 2 b. c.....	194	83 40	3 59
	20.	456.....	180	69 05	2 76		7.	1	193	33 35	1 43
	25.	C. L. Byrd.....	175	25	96		18.	1	182	36 62	1 48
	27.	458.....	173	126 65	4 84	M'ch	9.	1	131	39 52	1 14
	"	459.....	173	57 50	2 20		26.	2	114	66 92	1 69
Feb'y	6.	460.....	164	15 35	55	Ap'l	13.	347	97	13,605 59	293 26
	8.	461.....	162	170	6 12		17.	89	93	3,138 10	64 84
	16.	462.....	154	25 52	87		23.	11	87	353 56	6 83
	24.	464.....	146	10	82		24.	17	86	603 87	11 53

	25.	463	145	48	35	1	55		"	6		86	208	64	3 98
	"	465	145	157	83	5	09		29.	2		81	78		1 40
	"	express & tel...	145	1,000	50	32	23	May	1.	24		79	968	90	17
	26.	R. H. Allen & Co...	144	425		13	60		3.	5		77	158	88	2 72
M'ch	3.	L. Alex. & Co...	137	334	17	10	16		14.	35		66	1,156	05	17 20
	8.	466	132	1,000		29	23		18.	10		62	392	30	5 40
Ap'l	8.	J. W. Hill	102	1,100		28	95		19.	543		61	21,435	30	289 75
	"	Logwood	102	85		1	92		"	5		61	200	90	2 72
	16.	467	94	100		2	09		29.	13		51	452	05	5 12
	"	468	94	35			73	July	1.	7		19	237	20	1
	17.	470	93	6			12		5.	1		15	36	20	12
	"	475	93	22	60		46		13.	1		7	40	66	05
	19.	469	91	58	42	1	17			(1,302)					
	"	471	91	17	95		36			½ coms			681	20	0
	"	472	91	81	50	1	65			balc			324	83	915 77
	"	473	91	55	63	1	12								
	"	474	91	50	84	1	02								
	"	476	91	100		2	02								
	20.	tel	90	1			02								
	27.	exp. & tel	83	1,000	50	18	44								
	29.	477	81	150		2	76								
May	4.	478	76	44	65		81								
	5.	479	75	500		8	33								
	"	481	75	75		1	25								
	6.	480	74	30			49								
	7.	483	73	18	60		29								
	11.	482	68	36			55								
	12.	484	68	50			75								
	18.	485	62	40			54								
June	12.	378	38	10	50		08								
	14.	377	36	91	45		72								
	16.	375	34	277	72	2	69								
	"	376	34	100			75								
	17.	374	33	151	54	1	08								
	22.	379	28	26	64		16								
	26.	380	24	32	24		17								
	28.	381	22	24	63		12								
	29.	383	21	15	07		06								
July	1.	382	19	244	70	1	02								
	3.	385	17	3	80										
	5.	384	15	2	53										
	6.	386	14	14	15		04								
	8.	387	12	2	77										
	"	388	12	7	35										
	13.	389	7	25			06								
	14.	390	6	335			44								
	15.	391	5	5	25										
	16.	393	4	13	87										
	19.	392	1	84	70										
	20.	int		915	77										
				44,332	24	1,648	02						44,332	24	1,648 02
		To balc		324	83					bal. to gen. ac			324	83	

O K. N.

116 Folio —. MEMPHIS, *Aug. 9th*, 1886.

Henry Warten, Esq., in ac. with Latham, Alexander & Co. and Richard H. Allen & Co. through Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

								1886.							
Nov.	4.	Telegram			60			Feb'y	6.	Cash to Allen			425		
M'ch	3.	Exchange			86			M'ch	3.	" L. A. & Co			333	83	334 17
Ap'l	20.	Telegram			30					Ex			84		
	21.	100 b. c., May L			348	41									
	"	100 b. c., " A			318	35									
July	29.	100 " Aug. L			43										
	"	100 " " A			43										
Aug.	9.	Balance			4	65									
					759	17									759 17
Aug.	9.	To S., H. & Co			4	65		Aug.	9.	Balance					4 65

9—296

117 Folio 632. MEMPHIS, *Oct. 22d*, 1886.

Henry Warten, cot. acc't, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 236 and 238 Front street.

'86.									
July	28.	Cash	tel. N. Y.	84		1 00		01
	30.	"	No. 395	82		9 08		16
	31.	"	394, 396	81		86 38	1	54
Aug.	7.	"	397	75		32 85		56
	13.	"	398	69		87	1	32
	17.	"	399	65		2 75		4
	27.	"	400	55		125	1	53
Sept.	11.	"	400	41		44		40
	13.	"	by express	39		500	4	33
	17.	"	401	35		10 55		7
	21.	"	402	33		32 50		21
	22.	"	express int. 50c.	30		1,000	6	66
	28.	"	No. 1, int. & tel.	24		1,025 50	5	45
	30.	"	2	22		182 93		89
Oct.	1.	"	3	21		100		46
	2.	"	4 & 6	20		435	1	93
	4.	"	5 & ex	18		1,038 80	4	16
	5.	"	ex	17		1,000	3	77
	7.	"	No. 10	15		250		83
	8.	"	" 7 & ex	14		1,027	3	18
	9.	"	8 & 11	13		1,534	4	42
	11.	"	Ex. 90c.	11		1,000	2	44
	12.	"	13, 16, ex. & T.	10		1,087 66	2	62
	13.	"	12, 14, 15, & ex.	9		1,733 48	3	46
	14.	"	Ex. 17 & 18	8		1,052 73	1	86
	"	"	Moore & Daley	8		40 18		6
	15.	"	from M.	7		1,000	1	55
	16.	"	19, 20, 21	6		202 90		26
	18.	"	22, 23, 24, 25 & M. 80.	4		1,247 98	1	10
	19.	"	ex. & tel.	3		1,000 80		66
	20.	"	ex	2		1,000		44
	22.	"	27 & 26			240 01		
	"		H. Warten, mdse. ac.			3,355 24		
	"		Interest			35 92		
						21,621 96	56	37
Oct.	22.	Balance				10,336 56		

Aug.	9.	Cash		73		4 65		8
	10.	4 b. c.		72		164 30	2	64
	31.	1		51		41 05		46
Sept.	15.	2		37		67 90		56
	22.	4		30		162 30	1	08
	24.	3		28		137 40		84
	27.	1		25		37 25		20
Oct.	7.	2		15		90 50		29
	11.	69		11		2,867		7 00
	13.	15		9		614 70	1	22
	"	6		9		247 60		49
	15.	4		7		166 10		25
	16.	2		6		84 75		11
	"	5		6		205 75		25
	"	2		6		87 65	1	11
	"	30		6		1,215 30	1	60
	"	26		6		1,101 70	1	45
	"	2		6		81		10
	18.	11		4		449 70		40
	19.	3		3		125 20		8
	"	1		3		46 30		2
	20.	1		2		42 20		1
	"	7		2		289		12
	"	72		2		2,890 15	1	08
	21.	2		1		77 95		1
	22.	Balance				10,326 56	35	92
						21,621 96	56	37

O K. N.

118 Folio 630. MEMPHIS, *Oct. 22d*, 1886.

Henry Warten, Esq., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 & 258 Front street.

'86.							
Aug.	4.	Mdse.	48	899 95		9	60
	7.	"	45	105 44		1	05
	11.	"	41	89 81			80
	19.	"	33	364 49		2	66
	27.	"	25	13 65			7
	30.	"	22	345 68		1	68
Sept.	11.	" c.	11	159 80			38
	15.	" c.	7	411 82			64
	16.	" 6.		79 13			11
	17.	" 5.		25 50			3
	21.	" 1.		26 75			1
	28.	" 8.		495 77			
	29.	" 9.		183 54			
Oct.	9.	" 17.		455 31			
	22.	Interest		16 11			
				3,672 75		16	88
Oct.	22.	Balance		3,355 24			

Sept.	11.	C. R. pork	41	72 91			66
Oct.	2.	"	20	13 09			5
	4.	Ragn.	18	6 25			2
	21.	Pork	1	225 26			4
	22.	Balance		3,355 24		16	11

119 Folio 698. MEMPHIS, *Oct.* 22, 1886.

Henry Warten, Esq., Elkmont, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

Aug.	26.	Mdse		26	581	32	3	37	Oct.	13.	2 b. c		9	86	90	17
		" 90 d			79	18										60
Oct.	22.	Interest			2	51				20.	3 "		2	138	15	5
									34	"	1 "		2	48	40	1
										"	2 "		2	87	25	3
					665	01	3	37		22.	Balance			304	31	2 51
														665	01	3 37
Oct.	22.	Balance			304	31										

O K. V.

Shall we charge above balance to y'r Athens ac. or keep separate ac. for Elkmont business?

S., H. & CO.

120 Folio 630. MEMPHIS, *May* 6, 1887.

1.

Henry Warten, Esq., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

1886.										(275)					
Oct.	22.	Balance	194	10,326	56	445	15	Oct.	25.	24 b. c	190	901	20	38	24
	26.	Cash by ex	190	2,000		84	44		26.	Insurance	190	5	40		20
	"	" No. 28	190	6			25		28.	1 b. c., Sep., '86	235	47	40	2	44
	27.	Cash by W. B. Vaughn Co	189	263	44	11	04		"	Ties	188	6			25
	"	" mdse	189	302	99	8	48		29.	1 b. c	187	452	30	18	77
	"	H. Warten, Elkmont	189	304	31	12	76		"	67 "	187	2,812	30	116	84
	"	Cash by ex. & tel.	189	2,000	50	84	00		"	16 "	187	663	90	27	59
	29.	" No. 30, 31, 32, 33, 34	187	998	15	41	47		30.	7 "	186	288	45	11	90
	30.	" " 35 & J.E.L	186	260	00	10	74		"	5 "	186	214	20	8	84
	"	" mdse	186	95	25			Nov.	2.	1 "	184	34	10	1	38
Nov.	1.	" mdse	156	137	57	4	64		4.	14 "	182	559	35	22	60
						15	49		"	26 "	182	1,030	20	40	84
	2.	" 29, 30	155	379	25	3	27		"	43 "	182	1,715	20	69	35
	3.	" to Athens & Elkmont.	184	3,000		1	22		8.	64 "	178	2,483	70	98	20
	4.	" 37, 39, 40, 42, 43, 44, 45, &c	183	5,660	21	228	90		"	27 "	178	1,095	90	43	30
	8.	" 41 & 46	178	44	88	1	77		10.	10 "	176	364	65	14	24
45	10.	" 38 & 48	176	273	31	10	67		11.	1 "	175	41	55	1	60
1 50	12.	" 47	174	300		11	60		12.	4 "	174	158	95	6	14
50	13.	" 49, I. Wendman	173	709	20	37	25		16.	17 "	170	715	50	27	00
80									17.	1 "	169	40	80	1	53
50	15.	" 52, 53, & ex.	171	2,122	97	80	64		19.	33 "	167	1,324	10	49	12
50	17.	" 50	169	2,180	35	81	86		29.	63 "	157	2,518	75	87	85
35	"	Mdse	169	207	30	6	40		30.	1 "	156	44	40	1	52
50	18.	Cash, 51, 54, 55	168	1,254	20	46	80	Dec.	3.	3 "	153	107	75	3	68
50	19.	" 56 & Athens & Elkmont by ex	167	2,090	80	77	55		6.	218 "	150	8,292	10	276	39
30									10.	14 "	146	554	30	18	
6 20									13.	3 "	143	113	50	3	58
	"	Mdse	137	202	52	6	14		17.	5 "	139	206	75	6	40
	20.	"	137	55	83	1	68	Jan.	7.	6 "	119	238	40	6	28
	"	Cash by ex. & tel.	166	2,000	50	73	77		8.	3 "	118	103	58	2	72
	24.	" 58	162	224	52	8	06		24.	7 "	102	292	30	6	64
	26.	" 57 & ex. & tel	160	2,300	26	81	76		"	15 "	102	565	75	2	80
	27.	Mdse	129	31	87		89		"	66 "	102	2,586	65	58	60
	29.	Cash, B. B. & Co., 59, 60, 61	157	3,464	81	120	84		"	7 "	102	279	85	6	32
	30.	" B. B. & Co	156	3,023	36	104	80		25.	Cotton error	101		57		
	"	Mdse	126	60	50	1	68		26.	3 b. c	100	99	46	2	20
Dec.	1.	Cash	155	275	00	9	47		"	1 "	100	32	37		73
	2.	" ex. & tel	154	1,000	35	34	21		27.	2 "	99	83	75	1	82
	"	" " "	154	2,000	50	68	44	Feb'y	7.	9 "	89	362	48	7	15
									10.	2 "	86	72	85	1	39
									"	1 "	86	45	75		87
									17.	Hay & meal	79	30	54		52
									23.	2 b. c	73	73	90	1	20
									28.	1 "	68	34	90		52

	"	Mdse	124	61 58	1 70		
4.	Cash, Henle & W.		152	277 70	9 38		
"	"	Bamberger, B.	152	2,658 65	89 77		
6.	"	No.63 & tel.	150	30 50	1		
8.	"	64, 65, 68, 70, 71, 73, ex. & t.	148	3,121 10	102 66		
"	Mdse		118	57 20	1 48		
10.	Cash, 66, 72		146	151 64	4 89		
11.	"	67	145	678 64	21 84		
"	Mdse		115	3 31	7		
13.	Cash, 69, 1,000, 74, 1,090, ex. & tel.		143	2,291 15	72 79		
14.	"	in silver	142	1,000	31 55		
15.	"	75	141	47 21	1 47		
		Forwarded		59,832 95	2,267 51	Forwarded	31,696 15 1,107 53

O K.

121 Folio 631. MEMPHIS, *May* 6, 1887.

2.

Henry Warten, cont'd, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers & cotton factors.

1886.	Am't bro't for'd			59,832 95	2,267 51	Am't bro't forward	31,696 15	1,107 53
Dec. 16.	Cash ex. & tel		140	2,000 30	62 21	Feb'y 19. 21 b. c	77	814	13 93
18.	"	76 & 78	138	1,439 73	44 15	23. 1 "	73	39 50	65
20.	"	79 & 80	136	2,824 69	85 33	25. 1 "	71	22 90	36
21.	"	77 & 85	135	349 85	10 49	M'ch 3. 48 "	63	1,958 65	27 40
22.	"	81, 83, 84, 86, 87	134	1,812 64	53 98	2. 4 "	64	170 95	2 43
23.	"	82	133	275 60	8 12	(34)			
24.	"	88	132	250	7 32	4. 28 "	62	1,173 50	16 50
27.	"	89	129	200	5 72	" 32 "	62	1,293 50	17 80
"	Mdse		99	54 40	1 20	3. 51 "	63	1,758 90	24 68
28.	"		93	213 59	4 64	4. 3 "	62	143 15	1 96
'87.						7. 4 "	59	140 60	1 85
Jan. 5.	"		91	335 71	6 76	9. 2 "	57	81 40	1 02
11.	Cash B., B. & Co		115	5,000	127 77	10. 2 "	56	84 07	1 04
12.	"	91	114	200	5 06	17. 1 "	49	37 75	41
13.	"	J. F. William	113	53	1 32	18. 22 "	48	881 50	9 39
30 *	"	Mdse	113	2,607 11	65 45	" 9 "	48	385 65	4 10
30 *	"	"	113	1,565	39 29	" 6 "	48	217 85	2 32
14.	Cash, 92		112	29 70	74	" 6 "	48	211 09	2 25
15.	"	90	111	213	5 24	25. 1 "	41	40 70	36
17.	"	93	109	19	45	" Mdse	41	31 40	28
"	"	for 2 b. c., Vaughn	109	75 40	1 81	26. 4 b. c	40	169 25	1 50
19.	"	94	107	356 95	8 49	30. 2 "	36	66 75	53
28.	Mdse		68	67 74	1 04	Ap'l 6. Mdse	30	1 25	0
Feb. 5.	Cash		91	29	58	19. 2 b. c	17	90 70	33
"	Mdse		61	41 25	56	16. 990 "	20	44,758 70	208 85
16.	"		50	205 75	2 27	21 1 "	15	34 10	11
17.	"		49	1,807 50	19 69	23. Cash futures	13	758 79	2 18
25.	"		41	48 47	44	" Cotton	13	117 36	33
26.	"		40	86 74	76	25. 10 b. c	11	440 50	1 07
M'ch 7.	"		29	2,080 84	13 40	" 3 "	11	110 10	26
10.	Cash		56	30	0	" 50 "	11	2,143 95	5 13
11.	"		55	79	96	29. 1 "	7	38 60	5
14.	Mdse		22	62 25	29	May 6. ½ com	0	1,372 72	0
19.	"		17	15	5				
22.	Cash tel'g'm		44	50	0				
24.	Mdse		12	14 25	3	30			
Apr'l 1.	"		5	5 02	0	1 50			
6.	"			261 02	0	1 30			
"	2 b. c., error		30	72 20	48	3 10			
* 7 13.	Mdse			33 44	0	2 30			
* 7 "	"			33 44	0	6 40			
16.	Cash tel			50	0				
19.	"	tel., 103, 104	17	113 95	42				
20.	"	101	16	28 75	9				
		Forwarded		84,795 53	2,854 11	Forwarded	91,285 98		1,456 62

122 Folio 631. MEMPHIS, *May* 6, 1886.

3.

Henry Warten, cont'd, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

1887.		Am't bro't for'd		84,795 53	2,854 11		Am't bro't forward	91,285 98	1,456 62
Sept.	16.	Dis. on J. W. Hill note	20	233 77	1 04	May	6. Balance	11,972 90	2,018 43
	21.	Cash, 102	15	24 50	8				
	22.	" 100 & tel	14	160 85	49				
	23.	" 98 & 99	13	189 20	54				
	"	" N. Cohn	13	10	2				
* 20	26.	Mdse		161 59	0		92c.		
May	6.	Note due Oct. 15,'86	201	5,502 27	245 74				
	"	" " Nov. 1,'86	185	2,769 34	114 30				
	"	" " 15,'86	171	2,774 56	105 40				
	"	" " Dec. 1,'86	155	2,781 74	95 78				
	"	" " 15,'86		1,837 10	57 55				
	"	Interest		2,018 43					
				103,258 88				103,258 88	3,475 05
May	6.	Balance		11,972 90					

E. & O. E.

123 Folio 631. MEMPHIS, *June 1st*, 1889.

Henry Wartin, Athens, in acc't with Schoolfield, Hanauer & Co., wholesale grocers & cotton —, Nos. 256 & 258 Front street.

May	6.	Balance, 25		11,972 90	55 28	May	6. Corn, error	25	7 50	4
	7.	Cash, No. 107	24	6	3		" Int., error in cal	25	2 52	1
	9.	" " 106	24	47 40	22		" " on Hill note	25	234 81	1 29
	"	Mdse	24	9 95	0					1
	10.	Cash, 108	21	3 78	1		" " " meat bill	25	27 83	14
	11.	" 109	20	3 33	1		" Storage overch'g	25	18 00	9
	18.	Mdse		47	0		10. 3 b. c	21	101 90	17 48
	23.	Cash, 105	8	11 60	1		18. 1 "	13	41 25	11
	30.	Mdse		26 86			25. 1 "	6	35 08	4
	"	"		12 38						17
	31.	Cash telegram		65			27. 1 "	4	33 54	2
							30. Cash	1	7 21	8
							31. ½ com. on 6 b. c		2 76	0
June	1.	Interest		52 91		June	1. Balance		11,682 16	52 91
				12,194 76	55 56					
				11,682 16			Settled by notes.			

124 Folio 626. MEMPHIS, *June* 4, 1888.

1st.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers & cotton factors, Nos. 256 & 258 Front street.

1887.									
June	15.	Mdse	329	32 75	2 33	June	3. Cotton	361	11 56	88
	22.	"	312	26 23	1 80		15. Cash	349	529 05	41 02
	27.	"	307	100 25	6 81		" Starch	349	13	1 00
	28.	Cash & telegram	336	1	7	Aug.	12. Cash	292	480 95	31 20
July	2.	" 4, 5, 6, 8	332	325 61	24 00		16. Pork strips	288	258 30	16 51
	5.	" 1 & 2	329	519 75	37 94		26. 1 b. c	278	48 20	2 96
	7.	" 3 & 7	327	115 47	8 35		27. Cash	277	3 94	24
	8.	Mdse	296	167 40	10 98	Sep.	6. Bag'n	268	12 50	72
	11.	"	293	157 02	10 21		7. 1 b. c	267	46 33	2 73
	"	"	293	267 80	17 38		" (1) "	267	42 46	2 48
	20.	"	284	31 15	1 95		13. 8 "	261	311 28	18 03
						10c.				
	28.	"	276	3	18		14. 2 "	260	86 43	4 87
Aug.	1.	"	273	177 08	10 73		17. 3 "	257	121 23	6 96
	3.	"	271	502 11	30 22		" 3 "	252	132 62	7 53
	"	"	271	707 50	42 57		22. 2 "	247	88 07	4 92
				*		55c.				

	12.	Cash, 200, Aug. fur's & int	292	996 05	64	62
	15.	Mdse	259	349 25	20	08
	17.	"	257	96 26	5	48
	22.	"	252	80 38	4	48
	23.	"	251	510 82	28	44
	6.	"	251	182 17	10	14
	29.	Cash, J. Herman	275	382	23	34
	31.	Mdse	243	25 55	1	34
Sept.	1.	Cash, ex	273	1,000	60	66
	3.	Mdse	241	327 50	17	52
	5.	Cash	269	1,000	59	77
	"	Mdse	239	98 52	5	20
	7.	"	237	136 19	7	16
	12.	Cash, s. d. 1 & 2	262	62 43	3	61
	12.	Mdse	232	151	7	78
	13.	"	231	206 96	10	57
	14.	Cash, 3	260	798 70	46	10
	15.	" in silver & tel	279	1,000 50	57	55
	"	Mdse	229	288 42	14	65
	"	"	255	238 35	12	10
	19.	Cash, ex	255	1,000	56	66
	22.	" 5 & 6	252	52 61	2	91
	23.	" 4	251	10		56
	26.	" silver & cur.	248	2,000	110	27
	"	Mdse	218	165 04	8	
	28.	Cash, 8 & 10	246	48 50	2	62
	29.	" 9	245	363 21	19	92
59c.	"	Mdse	215	87 95	4	80
215						
Oct.	3.	Cash, 7	214	371 89	19	92
	4.	Cash, ex. & tel, No. 16	240	1,049 72	56	00
		Forwarded		16,214 09	947	77

34	27.	31	"	246	1,220 84	66 68
	28.	1	"	239	40 60	2 18
Oct.	5.	1	"	236	25 24	1 32
	8.	34	"	236	1,290 15	67 64
	"	1	"	236	42 93	2 25
	11.	1	"	233	42 60	2 17
	13.	7	"	231	277 83	14 21
	"	1	"	231	33 86	1 74
	"	19	"	231	758 24	38 90
	"	22	"	231	864 59	44 35
	14.	5	"	230	202 70	10 32
	15.	23	"	229	862 08	43 86
	"	65	"	229	2,414 08	122 84
	17.	1	"	227	25 32	1 76
	18.	2	"	226	73 78	3 71
	"	12	"	226	480 22	24 10
	19.	9	"	225	364 33	18 20
50	"	1	"	225	41 54	2 04
	21.	6	"	223	264 68	13 08
	"	3	"	223	127 17	6 28
	"	6	"	223	243 11	12 03
	"	12	"	223	474 26	23 48
	"	2	"	223	83 43	4 11
	22.	20	"	222	823 72	40 65
	24.	4	"	220	165 40	8 06
	26.	16	"	218	642 93	31 14
	29.	Mdse		215	1 29	6
*59c.	26.	37	b. c	218	1,471 20	71 25
Nov.	2.	9	"	212	350 93	16 53
		Forwarded		15,904 77	836	99

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2d.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

		Am't forward		16,214 09	947	77
Oct.	3.	Mdse	211	181 56	8	48
	4.	"	210	70 34	3	26
	5.	Cash, 12, 13, 14, 15	239	247 93	12	64
	6.	" 11 & ex	238	1,010 50	5	42
	"	Mdse	208	49 82	2	30
	"	"	208	60 75	2	81
	8.	Cash, 17, 18, 19, 20, 21	236	1,147 21	60	14
	"	Mdse	206	78 58	3	61
	10.	Cash, 24	234	6 20		32
	"	Mdse	204	80 25	1	36
	11.	"	203	34 50	1	53
	12.	Cash, 22, 23, 26	232	596 80	30	72
	"	Mdse	202	161 43	7	22
	13.	Cash, 25, 27	231	210 23	10	80
	14.	" 30	230	50	2	56
	"	Mdse	200	172 75	5	72
	15.	Cash, 2-, 31	229	76 25	3	86
	17.	" 29	227	54 17	2	9
	18.	" Hamilton Br.	226	429 20	21	54
	"	Cash, ex. Elkmont, 1,000; Athens, 1,000	226	2,000	100	44
	"	Mdse	196	207 40	9	01
	19.	Cash ex. & 34	225	2,221 08	111	04
	20.	Mdse	194	65 36	3	
	24.	Cash	220	249 58	12	17
	25.	Mdse	189	37 81	1	60
	26.	Cash, 37, 38, 39	218	1,236 32	59	88
	28.	" 35, ex	216	1,369 57	65	71
	29.	" 40	215	130 20	6	20
	31.	" 41, 42	213	10 44		48
	"	Mdse	183	32 17	1	27
Nov.	1.	Cash, B., B. & Co	213	2,133 90	100	96
	2.	" 44, 50, 52, 55, 60, ex	212	2,766 19	130	30
	"	Mdse	182	92	3	72

		Forward		15,904 97	836	99
1887.						
Nov.	2.	1 b. c	212	39 49	1	84
	9.	Cash	205	580	26	41
	"	8 b. c	205	285 45	12	97
'88.						
Jan.	9.	Cash	145	2,000	64	44
	23.	"	131	177 77	5	15
	30.	"	124	622 17	17	13
Feb'y	15.	"	109	549 85	13	32
	17.	"	107	225 32	5	34
	20.	30 b. c	104	1,440 03	33	27
Apr.	13.	Mdse	51	86 27		97
	27.	468 b. c	37	18,924 77	155	58
May	5.	2 "	29	84 75		54
	"	28 "	29	1,046 94	6	73
	9.	28 "	25	1,189 98	6	60
	"	3 "	25	115 58		64
15c.	12.	1,244 "	22	53,492 25	261	50
	"	Lard	22	52 21		10
	17.	1 b. c	17	30 16		11
	"	97 "	17	3,959 16	14	94
	"	1 "	17	42 43		16
	"	20 "	17	807 57	3	05
	23.	31 "	11	1,259 80	3	08
	"	7 "	11	263 49		64
	28.	14 "	6	591 75		80
	29.	3 "	5	113 83		12
	31.	3 "	5	109 60		12
June	4.	Commissions		1,377 95		

	3.	Cash, 43, 46, 47, 48, 51, 53	211	369	46	17	29
	"	Cash, Bamberger, B.	211	994	93	46	60
	4.	" 45, 61, 63, ex	210	2,628	03	122	65
	5.	" 54, 62	209	287	50	13	32
	7.	" 58, ex	207	2,050		94	30
	8.	" 56, ex	206	1,150	00	52	64
	9.	" 57	205	50		2	27
	10.	" (1 b. c.) 49	204	37	93*	1	72
	"	Mdse	174	115	09	4	44
	"	Cash, 59 & ex	204	2,100	50	95	20
		Forwarded		43,208	02	20,23	01

* 1 b. c to be deducted of Oct. 21. Sale of 6 b. c., 243.11, should be only 5 b. c.

Forwarded	105,373 54	1,472 54

† (D'ft 196.)

126 Folio 626. MEMPHIS, *June* 4, 1888.

3rd.

Henry Warten, cont., Athens, in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

1887.							
Nov.	10.	Forward		43,208	02	2,239	01
	11.	Cash, 67, 68	203	637	45	28	73
	"	" Sanders & R.	203	364	79	16	41
	"	" ex. & tel	203	1,000	30	45	10
	12.	" 66 & 70	202	343	35	15	39
	"	" Note B., B. & Co	202	1,133		50	85
	"	Cash note Henle, W. & Co	202	997	60	44	75
	"	Mdse	172	55	75	2	13
	"	"	172	47	20	1	79
	14.	Cash, 49, 64, & ex. 1,000, 2,000	200	3,918	10	174	13
	15.	Cash, 71	199	200		8	84
	"	Mdse	169	86	39	3	22
	16.	Cash, 65 & 72	198	180	93*	7	96
	"	Mdse	168	28		1	04
	17.	Cash, 73, 75, 76, ex.	197	150		65	66
	18.	" 78	196	50		2	17
	19.	" 80, 81, 82, 83, 84	195	644	23	27	90
	"	" 77, 85		1,228	75	53	20
	22.	" 79	192	250		10	66
	"	" ex	192	1,000		42	66
	"	Mdse	162	67	92	2	40
	23.	Cash, 74, 87	191	350		14	89
	"	Cash Elkmont, 1,000; Athens, 1,000	191	2,000		84	88
	"	Mdse	161	121	33	4	33
160*	24.	"	190*	19			80
	25.	Cash, 91, 92	189	172	30	7	22
	"	Mdse	159	28			98
	26.	Cash, 86	188	150		6	26
	"	Mdse	158	106	63	3	72
	28.	Cash, 88, 90, 93	186	8,679	86	358	73
	29.	" 94, 95, ex. & tel	185	1,451	97	59	68
	"	Mdse	155	108	91	3	76
	30.	Cash, 89	184	50		2	04
Dec.	1.	" 96, 98, B., B. & Co	183	3,184	90	129	48
	2.	Cash, B. Strong & Co., & ex	182	3,213	39	129	93
	"	Mdse	152	28			94
	3.	Cash, 98	181	143	46	5	76
	"	" B. Strong & Co	181	1,000	67	40	21
	"	Cash, Wolf, Son & M	181	442	88	17	77
	"	Cash, Henle & Wolfe	181	848	80	34	10
	5.	Cash, 99, 100	179	175	32	6	96
	"	Mdse	149	48	54	1	60
	6.	Cash & ex., 1,000, 2,000	178	3,000		118	66
	7.	Cash, 102	177	100		3	93
	8.	" 104, 108	176	90	25	3	52
		Forward		82,455	99	3,884	15

* Should be 189.93.

Am't bro't forw'd	105,373 54	1,472 54
	105,373 54	1,472 54

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4th.

Henry Warten, cont., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

1887.		Am't bro't for'd.....		82,455 99	3,884 15	Am't bro't for'd.....	105,373 54 1,472 54
Dec.	9.	Cash, 106 & ex...	175	2,070 40	80 49		
	10.	" 105.....	174	140 75	5 40		
	"	Mdse.....	144	84 33	2 68		
	12.	Cash, 103, 107, 111.....	172	1,021 06	39 01		
	13.	Cash, 110.....	171	2 80	11		
	14.	" 113, 114.....	170	15 70	60		
	15.	" 112,115,ex. & tel.....	169	2,324 21	87 28		
	16.	" 117, 118.....	168	124 88	4 66		
	17.	" Cassetty Oil Co...	167	13 07	48		
	19.	" 119, 121, 122, 124, 125.....	165	177 25	6 48		
	"	Mdse.....	135	29 38	86		
	20.	Cash, ex. & tel...	164	2,000 30	72 88		
	"	Mdse.....	134	73 30	2 17		
	21.	Cash, 116, 123.....	163	19 59	68		
	22.	" 126, 131.....	162	390	14 12		
	21.	Mdse.....	133	123 20	3 63		
	23.	Cash, 128.....	161	150	5 32		
	24.	" 129, 131, 133, 134 135.....	160	726	25 80		
	26.	" 109, 132.....	158	59 91	2 10		
	27.	" 130.....	157	137 50	4 80		
	28.	" 137.....	156	500	17 32		
	29.	" 138, 140.....	155	360 20	12 40		
	30.	" 127, 139.....	154	250	8 56		
	"	Mdse.....	124	166 65	4 60		
	31.	Cash, 142.....	153	94 45	3 20		
'88.							
Jan.	2.	Cash, 141, 143, 147, 148, & B., B. Co.....	152	*2,441 44	82 45	*Should be 2,441.37.	
	4.	Cash, 146 & B. S. & Co.....	150	1,066 61	35 52		
	5.	Cash, 145.....	149	141 92	4 66		
30	7.	" ex. & tel...	147	1,000 30	32 66		
	11.	" 101.....	143	100 00	3 20		
	12.	Mdse.....	112	367 01	9 13		
	16.	Cash, 149, 151, 153.....	138	346 43	10 60		
	17.	Cash, 152.....	137	371 96	11 28		
	19.	" 150, 154, 155.....	135	65 82	2		
	"	Mdse.....	105	261 71	6 09		
	20.	"	104	331 22	7 64		
50	24.	Cash, telegram..	130	50	1		
	25.	Mdse.....	100	2,020	44 44		
	"	"	99	89 72	1 95		
	27.	Cash, 156.....	127	119 36	3 36		
	30.	Cash, Henle, Wolfe & Co.....	124	655 50	18 04		
Feb'y	1.	Cash, 157, 158, 159, 160.....	123	62 07	1 68		
	2.	Cash, ex. & tel...	121	1,000 50	27 10		
		Forward.....		103,952 99	4,591 59		105,373 54 1,472 54

128 Folio 626. MEMPHIS, *June* 4, 1888.

5th.

Henry Warten, cont'd, Athens, in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

1888.		Am't bro't for'd.....		103,952 99	4,591 59	Am't bro't for'd.....	105,373 54 1,472 54
Feb'y	3.	Cash, 161.....	121	331 88	8 89		
	6.	" 165.....	118	194 39	5 08		
	"	Mdse.....	88	137 97	2 69		
	7.	Cash, ex. & tel...	117	1,000 30	26 00		
	9.	" 163, 168.....	115	97 50	2 47		
	10.	Mdse.....	84	2,600 95	48 52		
	11.	Cash, 162.....	113	500	12 46		
	13.	" 164, 166.....	111	117	2 88		
	14.	" 169.....	110	136 03	3 32		

	15. " 167, 170, 172	109	79 30	1 92	
	" Mdse	79	44 65	78	
	16. Cash, 171	108	30	72	
	18. " 173	106	30	70	
	20. " 174	104	25	57	
	22. " 175	102	17 25	40	
	25. " 176, 177, 178, 182, 185	99	395 52	8 68	
	27. " 179, 183, 184	97	143 03	3 08	
	28. " 187	96	130	2 76	
	29. " 180, 186, 189	95	244 20	5 14	
	" Mdse	65	42 50	60	
M'ch	1. Cash, 188	93	35 98	74	
	2. " 181	92	4 50	08	
	3. " 192	91	100	2 01	
	5. " 191, 193	89	330 30	6 52	
	5. Mdse	59	152 28	2 00	
	" "	59	24 61	32	
	8. Cash, 196	86	103 10	2 00	
	9. " 194	85	7 32	12	
	10. " telegram	84	55	01	
	12. " 195	82	9 77	17	
	16. " 198	78	103 90	1 80	
	21. " telegram	73	85	0	
	24. " 197	70	3	4	
	27. Mdse	37	331 08	2 72	
	28. Cash, telegram	66	50	0	
Ap'l	5. Mdse	29	1,950 07	12 56	
	9. Cash, 200	55	100	1 21	
	11. " 190, 199	53	110	1 29	
	12. Mdse	22	57 46	28	
	18. Cash, 201	46	65 45	66	
	19. " 202	45	10	9	
	21. " Morgan & H	43	54 10	51	
	23. " 213	41	1 94	1	
			113,807 02	4,764 39	105,373 54 1,472 54

129 Folio 626. MEMPHIS, *June* 4, 1888.

6th.

Henry Warten, cont'd, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front streets.

'88.							
Ap'l	25. Am't for'd		113,807 02	4,764 39	Am't forw'd	105,373 54	1,472 54
	" Mdse	9	161 96	32	June 4. Balance	12,827 08	3,295 87
	27. "	7	79	12			
May	8. Cash, telegram	26	50	0			
	9. " 204	25	112 19	61			
	11. " G. W. Vandegrift	23	225	1 14			
	14. " 205	20	300 86	1 32			
	15. Mdse		83 20	0			
	16. Cash, 206	18	135	53	E. & O. E.		
June	4. Interest		3,295 87				
			118,200 62	4,768 43		118,200 62	4,768 43
1887.							
June	1. 1 note due Oct. 15,'87, with int		4,000		146 b. c. on hand.		
"	Note due Nov. 15,'87, with int		4,000		Loss on ties	37 50	
"	Note due Dec. 1,'87, with int		3,682 16		1/8 " meat	31 56	
1888.					Error cotton sales	1 40	
June	4. Int. on notes		944 95			70 46	
			25,454 19				
	Error		9				
			25,463 19				
			70 46				
			25,392 73				
	Error		7				
			25,392 66				

130 Folio 626. MEMPHIS, *July* 9, 1888.

Henry Warten, Esq., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

1888.				9,532 08			June	8.	2 b. c.	31	84 30	57
June	4.	Balance	25	12,827 08	74 12			"	10 "	31	383 40	2 64
	6.	Cash, 207	33	48 68	35			9.	1 "	30	18 40	12
		Error Nov. 16, '87..	33	9	6			14.	79 "	25	3,081 95	17 11
	11.	Mdse	0	60 03	0			"	2 "	25	75 60	41
	12.	"	0	71 39	0			16.	26 "	23	1,025 89	5 23
	23.	"	0	16 90	0			"	1 "	23	42 16	20
	29.	Cash, tel	10	50	0			18.	7 "	21	257 87	1 20
		Mdse	0	102 01	0			"	5 "	21	197 03	91
July	5.	Louisville B'k'g Co	4	180	16			29.	11 "	10	265 22	80
	9.	Interest		42 95			July	3.	Cash	6	99 44	12
								7.	Cotton error 4, 21, '87, 88 b. c.		1 40	0
								"	½ on meat Jan. 25, '88	164	31 56	1 13
								"	On ties		37 50	1 26
								"	Commission		77 92	3
								"	1 b. c.		28 18	1
								9.	Balance		7,550 70	42 95
				13,558 52	74 69						13,358 62	74 69
July	9.	To balance		7,550 70			July	9.	Note due Oct. 15, '88		6,696 93	
1887.							"		" Note due Nov. 15, '88		6,696 93	
June	1.	Y'r note due Oct. 15, '87, with 8 % int		4,000			"		" Note due Dec. 1, '88		6,696 93	
"		" Y'r note due Nov. 15, '87, with 8 % int		4,000								
"		" Y'r note due Dec. 1, '87, with 8 % int		3,682 16								
July	9.	Int. due on notes		857 93								
				20,090 79							20,090 79	

O K. W.

131 Folio 629. MEMPHIS, *Jan.* 25, 1889.

1st.

Henry Warten, Esq., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

1888.							July	13.	5 b. c.	192	223 48	9 52
July	11.	Cash, telegram	194	50	02			17.	Cash	188	3.6 85	13 61
	12.	" "	193	50	02			19.	2 b. c.	186	67 65	2 81
	14.	Mdse	161	168 20	6 01		Aug.	1.	Cash	174	100	3 86
	21.	"	154	168 67	5 74			14.	Mdse	161	8 10	28
	28.	Cash, Louis. B'k'g Co	177	500	19 66			17.	"	158	80	03
Aug.	2.	Mdse	143	182 80	3 77			25.	"	150	4	*3 46
	4.	"	141	112 33	3 50		Sept.	7.	Tobacco	138	12 70	36
	7.	"	138	156	4 80			2 .	Cash	125	72	2 00
	11.	"	134	247 97	7 28		Oct.	2.	5 b. c.	113	218 20	5 47
	"	"	134	379 56	11 28			15.	45 "	100	1,973 45	43 84
	16.	"	129	25 99	74			16.	Cash	99	104 75	2 30
	20.	"	125	175 42	4 85			"	6 b. c.	99	267 17	5 87
	22.	"	123	89 92	2 45			"	9 "	99	385 66	8 46
	23.	"	122	1,039 99	28 20			17.	9 "	98	271 68	8 07
	27.	"	118	9 15	24			19.	46 "	96	1,953 84	41 66
	30.	"	115	46 65	1 20			20.	15 "	95	646 86	13 63
	"	Cash, Henle & W.	145	50	1 60			"	18 "	95	770 50	16 25
	"	Mdse	114	135 02	3 45			22.	1 "	93	51 95	1 07
Sept.	1.	"	114	32 22	81			25.	6 "	90	266 42	5 32
	3.	"	112	176 05	4 40			"	12 " (should be 10 b.c.)	90	477 99	9 53
	4.	"	111	225 97	5 54			26.	87 "	89	2,793 43	75
	8.	Cash	137	123	3 76			"	26 "	89	1,151 28	22 76
	10.	Mdse	105	218 32	5 08			29.	Cash	86	1,378 26	26 33
	"	"	105	347 23	8 09			30.	"	85	714 90	13 48
	11.	Cash by ex	134	500	14 89			26.	42 b. c.	89	1,870 77	36 98
	12.	" s. d. No. 3	133	45	1 32			29.	3 "	86	144 05	2 75
	13.	" " " 2	132	21 20	64			"	9 "	86	404 45	7 72
	14.	" " " 4&5.	131	111 41	3 22			31.	7 "	84	307	5 72
	17.	" " " 6	128	3 51	11							

	19.	Mdse	96	482 56	10 28
	20.	Cash, 7	125	15 32	41
	"	" by express..	125	1,000	27 77
	"	Mdse	95	113 38	2 40
	21.	"	124	268 35	7 38
	22	Cash, 9	123	40 80	1 12
	"	Mdse	93	270 75	5 60
	"	"	93	123	2 56
	25.	Cash, 11, 12	120	89 32	2 36
	"	Mdse	90	80 29	1 60
	26.	"	89	68 51	1 34
	28.	Cash & tel., curr'cy, 1,000; silver, 1,000	117	2,000 70	52 00
	"	Mdse	89	116 50	2 24
Oct.	1.	"	84	119 99	2 24
		Forward		10,082 05	273 97

	"	2 "	84	91 02	1 69
Nov.	1.	Cash	84	1,341 21	25 04
	1.	2 b. c	84	93 37	1 73
	2.	4 "	83	192 60	3 83
	"	28 "	83	1,190 14	21 94
	5.	5 "	80	222 79	3 94
	"	31 "	80	1,529 88	27 17
	7.	31 "	78	1,396 21	24 19
	"	52 "	78	2,299 20	39 84
	3.	16 "	82	700 43	12 75
	15.	Cash	70	2,002 05	31 12
	8.	1 b. c	77	49 63	84
	9.	3	76	134 93	2 25
	12.	9	73	422 90	6 84
		Forwarded		29,733 74	591 01

*3.33.

131½ Folio 629. MEMPHIS, *Jan'y* 25, 1889.

2.

Henry Warten, cont'd, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 & 258 Front street.

1888.		Am't bro't for'd		10,082 05	273 97
Oct.	1.	Mdse	84	114 95	2 16
	2.	Cash from M	113	1,000	25 10
	3.	" 13 & 15..	112	159 01	3 95
	"	" by ex. & tel..	112	1,000	24 89
	4.	" 14	111	45 13	1 10
	5.	" 17, 19, ex. & tel., 1,000	110	1,096 37	26 78
	"	Mdse	80	132 06	2 34
	6.	Cash, 18	109	17 62	44
	8.	" 21, 23	107	205 98	4 89
	"	Mdse	77	117	2 00
	9.	Cash by ex., 16, 22, 24..	106	2,138 74	50 35
	"	Mdse	76	141 37	2 40
	10.	Cash, 25, 29	105	147 23	3 42
	11.	" 31	104	150	3 46
	"	Mdse	74	97 11	1 60
	"	"	74	195 31	3 20
	12.	Cash, 20, 32, 33	103	152 38	3 47
	13.	" A. N. Kellogg	102	100	2 26
	"	" 28, 34, 35	102	711 57	16 11
	15.	" 26, 27, 36	100	869 47	19 30
	16.	" 37, ex. from M., 8, 2,000; 99, 1,000	99	3,187	70 11
	17.	" 38, 40, 41, 43..	98	883 64	19 22
	"	Mdse	68	18 10	28
	18.	Cash, 39, 42	97	793 55	17 08
	19.	" 44	96	100	2 12
	20.	" 45	95	660 18	13 93
	"	Mdse	65	69 59	1 00
	23.	Cash by ex	92	2,000	40 88
	"	Mdse	62	150 75	2 08
	24.	Cash, 46, 47, 51, 52..	91	2,089 67	42 24
	25.	" 48, 53	90	1,063 91	21 28
	"	Mdse	60	129 55	1 72
	26.	Cash, 54	89	61	1 20
	27.	" 49, 50, 55	88	1,525 59	29 82
	29.	" 57	86	300	5 72
	"	" dis. on c'ks..	86	1 70	03
	30.	" Bamberger, B. & Co., 60.	85	2,012 23	38 00
	"	" by ex. & tel..	85	2,000 50	37 77
	"	Mdse	55	246 76	2 96
	31.	Cash, 59, 62, 63	84	244 86	4 56
	"	Mdse	54	70 30	84
Nov.	1.	Cash, 61, ex. & tel..	84	2,147	40 08
		Forwarded		38,429 23	866 11

		Am't bro't forward		29,733 74	591 01
Nov.	13.	18 b. c	72	845 36	13 52
	"	2 "	72	102	1 63
	"	1 "	72	49 45	78
	"	3 "	72	144 94	2 30
	"	14 "	72	637 65	10 19
	"	5 "	72	240 72	3 84
	"	2 "	72	100 72	1 60
	15.	4 "	70	200 24	3 10
	16.	10 "	69	468 43	7 17
	17.	19 "	68	808 89	12 20
	19.	5 "	66	239 98	3 52
	20.	2 "	65	93 94	1 36
	21.	5 "	64	213 21	3 04
	22.	2 "	63	106 60	1 48
	"	16 "	63	776 57	10 86
	23.	22 "	62	978 40	13 47
	26.	38 "	59	1,756 16	23 03
	30.	5 "	55	233 15	2 84
Dec.	1.	16 "	54	727 94	8 72
	5.	3 "	50	143 68	1 60
	"	3 "	50	139 40	1 54
	12.	1 "	43	46 15	43
	14.	7 "	41	343 91	3 12
	28.	C. 3 b. c	27	146 45	87
	29.	Cash "	26	1,000	3 77
'89.					
Jan'y	11.	110 b. c	14	4,866 89	15 13
	14.	152 "	11	6,527 49	15 95
	"	9 "	11	382 03	92
	"	78 "	11	3,273 55	8 00
	16.	50 "	9	2,091 60	4 17
	18.	Cash	7	207 45	32
	"	4 b. c	7	148 37	22
	"	2 "	7	79 79	12
	"	14 "	7	632 19	97
	"	5 "	7	213 83	33
	"	4 "	7	176 43	27
	"	31 "	7	1,285 ¶4	2 00
	"	2 "	7	103 63	16
	19.	1 "	6	37 20	4
	"	27 "	6	1,059 30	1 40
	"	19 "	6	796 24	1 05
		Forwarded		62,159 41	780 04

132 Folio 629. MEMPHIS, *Jan'y* 26, 1889.

3rd.

Henry Warten, cont'd, in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

1888.		Am't bro't forward		38,429	23	866	11
Nov.	2.	Cash dis. on c'ks, 65	83	47	13		86
	3.	" 68	82	502	90	9	14
	"	Mdse	52	283	37	3	26
	5.	Cash, 67, 70, 72, 74.	80	720	19	12	80
	6.	" 76	79	54	80		96
	"	Mdse	49	82	81		90
	7.	Cash, 75 from M., 1,000; 69, 80	78	1,265	35	21	92
	8.	" 64, 71, 78, 79..	77	290	92	4	97
	9.	" 81	76	7	52		12
	10.	" 73, 82	75	93	82	1	56
	13.	" 77, 84	72	540		8	64
	"	Mdse	42	55	75		52
	"	"	42	110	45	1	04
	14.	Cash, 58	71	500		7	88
	"	Mdse	41	164	35	1	48
	"	"	41	81	86		73
	"	"	41	117	61	1	06
	15.	Cash, 86	70	88	60	1	40
	16.	" 88 & ¼ dis. on d'ft	69	39	40		59
	17.	" 85	68	348	78	5	25
	19.	" 89	66	177	35	2	59
	"	" ex., Elkmont, 1,000; Athens, 2,000	66	3,000	50	44	00
	21.	Cash, 90 & ex	64	2,424	51	34	48
	21.	Mdse	34	24	65		18
	22.	Cash, 83, 91	63	106	35	1	48
	23.	" Athens, 2,000; Elkmont, 1,000.	62	3,000	50	41	32
	"	" B. Strong Co., 93, 94, 95	62	2,125	10	29	28
	24.	" 96	61	160	27	2	17
	27.	" Elkmont, 1,000; Athens, 2,000	60	3,000	00	38	66
	"	Mdse	30	164	36	1	01
	28.	Cash B., B. & Co., 92, 97, 98, 99.	59	6,023	82	76	28
	30.	" ex. & tel., 100..	55	2,579	68	31	52
Dec.	1.	" 101, 102	54	332	25	4	00
	3.	" 108, 109, 111, 113, 114, 115, 116, 117, 118..	52	2,408	03	27	82
	4.	" & by ex. & tel., 104 ...	51	2,101	40	23	84
	"	Mdse	21	4	95		01
	5.	Cash, 106, 119	50	692	29	7	69
	6.	" by ex., 2,000, 107, 110	49	2,269	55	24	72
		Mdse	19	76	13		32
	7.	Cash, 103, 120, 121, 122, 123	48	2,279	98	24	32
	8.	" ex., 105	40	1,186	8-	12	40
	10.	" from M., 1,000, 102, 138, by ex.	48	3,590	52	35	90
		Forwarded		81,553	34	1,415	18

Am't bro't forward	62,159	41 780 04
	62,159	41 780 04

133 Folio 629. MEMPHIS, *Jan'y* 25, 1889.

4th.

Henry Warten, cont., Athens, in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 & 258 Front street.

1888.		Am't bro't forw'd		81,553 84	1,415 18		Am't bro't forw'd	62,159 41	780 04
Dec.	10.	Mdse	15	124 12	41				
	11.	Cash, 131, 136, & by ex	44	1,190 60	11 64				
	12.	" 126, 127, 129, & by ex	43	2,477 21	23 66				
	"	Mdse	13	1,236 62	35				
	13.	Cash, 132, 137, 139, 141, 142	42	642 19	6 00				
	"	Mdse	12	78 20	20				
	14.	Cash, 124, 128, 143, 144, 146	41	757 38	6 89				
	15.	" 145	40	18 75	17				
	17.	" 151, 152, & ex. 1,000, 2,000	38	3,505 07	29 60				
	"	Mdse	8	27 50	04				
	18.	Cash, 140, 148, 150, 154, 155, 156, 158, 159, 163, ex	37	5,102 99	41 92				
	19.	" 147, 153, 159, 160, 161, 164	36	919 45	7 36				
	20.	" 149 & ex	35	3,002 30	23 32				
	"	Mdse	5	160 90	17				
	21.	Cash, 162, 165, 166, 168, 169, 172, 173	34	1,051 87	7 92				
	22.	" 170	32	50	36				
	24.	" 133, 167, 174, 177, 181	30	408 59	2 81				
	26.	" 125, 130, 176, 178, 180	28	523 20	3 37				
	27.	" 171, 182	27	982 45	6 10				
	28.	" 175, 177	26	137 50	81				
	29.	" 185, 186, 188, & ex., $1.00	25	225 89	1 29				
	31.	" 191, 193, 194	23	290 03	1 54				
Jan.	2.	" 191, 193, 195	23	275 20	1 92				
	"	Mdse	0	225 37	0	9 days,	36		
	3.	Our 30 d. acc., I. Herman	0	1,085 42	0	8 "	2 29		
	4.	Cash, 179, 187, 197, 201, 202	21	2,864 96	13 36				
	5.	" 204	20	200	89				
	7.	" 199, 200, 206	18	942 57	3 77				
	"	Mdse	0	276 36	0	12 "	73		
	8.	Cash	17	100 75	37 37				
	9.	" B., Bloom & Co	16	1,000	3 55				
	"	" Hess, Henly Co	16	25	9				
	11.	" telegram	14	50	0				
	14.	" Elkmont, 2,000.50; Athens, 1,000.30	11	3,000 80	7 32				
	"	Mdse	0	386 06	0	19 "	1 63		
	15.	Cash, 203, 207, 209, & ex	10	1,157 33	2 56				
	"	Mdse	0	106 75	0	20 "	47		
	16.	Cash, 212	9	28 27	5				
	17.	" ex. 2,000, 210, 213	8	2,149 30	3 80				
	19.	" 214	6	15 40	2				
	21.	" 218	4	54 05	4				
	"	Mdse	0	980 55	0	26 "	5 69		
							11 15		
		Forwarded		118,328 29			Forwarded	62,159 41	780 04

134 Folio 629. MEMPHIS, *Jan'y* 25, 1889.

5th.

Henry Warten, cont., Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

1889.		Am't bro't forw'd		118,328 29	1,628 85		
Jan.	22.	Cash, 211		37	2		
	23.	" 215, 217		78 62	3		
	24.	" 216		31 59			
		Mdse		60			
	25.	Interest		848 06			
					1,628 90		
Jan.	25.	Balance		57,224 95			
Dec.	28.	To Barley Bros		58 70			
		" error in cotton		9 00			
				57,292 65			
				262 33			
				57,030 32			
		To error in interest		13 32			
		" bagging		6 22			

		Am't bro't forward	62,159 41	780 04
Jan'y	25.	Balance	57,224 95	848 86
		Bro't for'd	11 15	
		29 days	39	
		Sept. 21	1 78 diff.	
			13 32	
		1,418 b. c. on hand.		
M'ch	9.	By error in d'fts		3 00
		" ret. bagging		132 06
		" " "		127 27
				262 33

135 Folio 709. MEMPHIS, *May* 22, 1889.

1st.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front St.

Jan.	25.	Balance	117	57,224 95	1,465 80		
	26.	Cash s. d. 218, 219.	116	45	1 16		
	"	Mdse	86	1,718 75	32 82		
	29.	"	83	291 77	5 36		
	30.	Cash, 221, 222	112	66 05	1 64		
	31.	" 223	111	55 44	1 37		
	"	Cotton charges	111	9	22		
Feb'y	1.	Cash, 220	110	15	36		
	5.	½ discount	107	1 94	4		
	6.	Cash, 192	106	58 70	1 38		
	8.	Brown & Farnell	104	700	16 17		
	"	Mdse	74	37 35	60		
	9.	Cash, Brown & F. ex., 1,200.80	103	260 45	5 84		
	"	" B., B. & Co., ex., 1,200.80	103	1,201 80	27 49		
	12.	" 224	100	60	1 32		
	13.	" 225	99	100	2 20		
	"	Mdse	69	139 97	2 04		
	"	"	69	1 50	1		
	14.	Cash, 227	98	43 50	93		
	16.	" 226	96	16 38	33		
	18.	Mdse	64	155 74	2 11		
	22.	Cash by ex	90	1,000	20		
	"	Mdse	60	1,878 14	25 04		
	25.	Int. error	87	3 33	5		
	26.	Cash, 229	86	1,037 50	19 80		
	27.	Mdse	56	222 30	2 72		
M'ch	2.	"	50	51 50	56		
	11.	Cash, 232, 233, 235.	71	84 04	1 32		
	"	" 237, 238	71	104 60	1 64		
	"	" B., B. & Co.	71	1,216 70	19 18		
	12.	" 236	70	24 49	36		
	13.	" 234	69	37 01	56		
	14.	" 239	68	122 97	34		
	15.	" 230	67	54 05	80		
	16.	" 231, 242	66	159 40	2 33		
	18.	" 240, 241	64	84 82	1 21		
	"	Mdse	34	1,274 20	9 61		
	27.	Cash, 243	55	47 50	57		
	"	" Hess, Henly & Co	55	50	60		
	29.	Mdse	23	87 72	44		
	30.	Cash, 244	52	72 50	83		
Ap'l	4.	" 246	48	63 82	68		
	5.	" 245, 247	47	43 02	44		
		Forwarded		69,822 90	1,678 27		

Jan	25.	24 b. c	117	1,042		27 09	
	29.	Cash error	113	3		7	
	30.	21 b. c	112	91 10		2 26	
	31.	25 "	111	1,118 95		27 57	
	"	13 "	111	540 28		13 32	
Feb'y	1.	15 "	110	597 73		14 72	
	"	3 "	110	123 42		3 04	
	4.	Cash	107	1,555 32		37 33	
	9.	2 b. c	102	81 72		1 85	
	13.	2 "	99	72 12		1 60	
	18.	Cash	94	410 90		8 56	
	20.	Mdse. bag'n	92	278 87		5 70	
	"	Cash	92	1,219		24 92	
	18.	2 b. c	90	96 49		2 02	
	23.	Mdse	87	8		16	
	25.	Cash	87	2,850		55 12	
	23.	1 b. c	86	43		84	
	26.	Mdse	83	250 63		4 80	
	27.	2 b. c	82	92 80		1 76	
M'ch	2.	23 "	80	948 83		16 84	
	6.	Mdse	76	85		1 44	
	8.	"	74	92		1 52	
	"	7 b. c	74	290 93		4 76	
	13.	11 "	69	447 32		6 84	
	23.	C. K. pork	59	25 50		72	
	26.	54 b. c	56	2,218 67		27 60	
	"	4 b. c	56	165 12		2 04	
	28.	608 "	54	27,310 99		327 73	
	"	74 "	54	3,190 85		38 29	
	29.	Cash	53	1,200		14 12	
	30.	123 b. c	52	5,817 16		67 27	
Apr.	1.	201 "	51	8,297 36		94 02	
	1.	3 "	51	116 15		1 31	
	2.	22 "	50	874 32		9 70	
	"	26 "	48	1,072 59		11 92	
	4.	7 "	48	230 26		2 04	
	"	3 "	48	127 28		1 36	
	5.	6 "	47	234 77		2 44	
	"	23 "	47	974 92		10 17	
	8.	2 "	44	81 92		80	
	"	3 "	44	108 64		1 05	
	11.	238 "	41	9,302 04		84 76	
	"	2 "	41	92 18		83	

136 Folio 709. MEMPHIS, *May* 22, 1889.

2.

Henry Warten, cont'd, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

1889.		Am't bro't for'd		69,822	90	1,678	27	'89.		Am't bro't for'd		73,780	22	962	30
Ap'l	8.	Cash, 248	44	309	71	3	01	Apr.	11.	12 b. c	41	461	57	4	20
	10.	" Bamberger, B	42	1,216	11	11	34		13.	1	39	37	02		32
	11.	" 251	41	75			68		17.	Storage	35	3			1
	12.	" 250, 252	40	114	25	1	00		"	1 b. c	35	33	37		25
	15.	" 249	37	51	30		41		"	16 "	35	579	48	4	49
	16.	" 253	36	145	90	1	16		"	14 "	35	528	61	4	10
	20.	255	32	100			70		20.	4 "	32	143	60	1	01
	23.	256, 257	29	40	64		25		23.	1 "	29	17	34		10
	24.	258	28	15	79		9		25.	8 "	27	302	72	2	60
	26.	259	26	22	63		12		"	2 "	27	70	92		42
	27.	260	25	18	46		9		"	18 "	27	661	14	3	96
May	22.	Interest		706	37				"	1 "	27	41	23		24
		Balance		7,667	21			May	4.	36 "	18	1,297	07	51	18
									"	4 "	18	131	86		52
									"	4 "	18	187	79		74
									15.	2 "	7	90	83		13
									"	1 "	7	32	67		4
									17.	4 "	5	124	88		13
									21.	Cash		60			1
									22.	Commission		1,720	95	706	37
				80,306	27	1,697	12					80,306	27	1,697	12
July	9.	Note due Oct. 15, '89.		6,696	93			May	22.	Balance		7,667	21		
		" " Nov. 15, '89.		6,696	93					Balance		13,821	02		
		" " Dec. 15, '89.		6,696	93					By fgt. on botts		1	60		
May	22.	Int. " on notes		1,397	94					Error in ins			85		
				21,488	23					Commission July cot		4	00		
May	22.	Balance		13,821	02					Overcharge, 107.32, ¼		26	83		
				33	28							33	28		
Nov.	1.	5,000.00		13,787	94										
June	1.	5,000.													
Jan'y	1.	3,787.94.													

137 Folio —. MEMPHIS, *Jan'y* 9, 1890.

Henry Warten, Athens, Ala., in acc't with Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 & 258 Front street.

1889.								1890.					
May	22.	Note with int. due Nov. 14, '89		5,000	00			Jan'y	9.	Balance		17,032	40
	"	" " " " Dec 14, '89		5,000	00								
	"	" " " " Jan. 14, '90		3,787	94								
June	10.	" due 4 mos., Oct. 13, '89		2,500	00								
1890.													
Jan'y	9.	Int. on above		744	46								
				17,032	40							17,032	40
Jan.	9.	Balance		17,032	40								

138 Folio 622. MEMPHIS, *Nov. 5th*, 1889.

1st.

Henry Warten, Esq., Athens, Ala., in acc't with the Schoolfield-Hanauer Company, successors to Schoolfield, Hanauer & Co., wholesale grocers and cotton brokers, Nos. 256 & 258 Front street.

1889.								1889.					
Apr.	3.	Mdse	182	14	75		60	June	8.	Mdse	147	4	55		16
	20.	"	165	14			51		"	"	147	20	43		65
	30.	"	155	47	85	1	64		10.	Cash	145	2,414	59	77	77
May	23.	Cash M. Rosenheim	162	5	17		17		18.	Mdse	137	23	90		73
	24.	" Guggenheim Co	161	456	17	16	67		"	"	137	47	28	1	42
	25.	" A. C. Gillum & Co., ch. & pro, 60.00, 3.29	160	63	29	2	24		19.	Cash from S. H. & Co	136	118	10	3	56
								July	16.	"	109	1,114		26	97
									26.	Mdse	99	24	56		54
								Aug.	16.	Cash	79	57	80	1	01

	27.	" L. H. Grubbs..	158	7 90	28
June	3.	Mdse.....	122	399 01	10 81
	7.	Cash J. J. Mitchell..	148	5 81	19
	"	" Marks & Co.....	148	185 57	6 12
	"	" J. Shillito & Co.....	148	4 75	16
	"	" Forchett & Legg.....	148	75	2 46
	"	" Scharff & B.....	148	20 15	65
	11.	" Ab. Kerchbaum.....	144	488 92	15 64
	"	" A. & L. Gans & Co.....	144	266 49	8 51
	12.	Mdse	113	57 77	1 45
	13.	Cash Banner & B...	142	672 08	21 20
	"	" Leverwright & G.....	142	358 52	11 29
	"	" W. G. Davis...	142	20	62
	"	" Theo. Westmoreland...	142	15	48
	14.	" Ballard, Bro. & Co.....	141	47 52	1 50
	"	" Brueler, G. & Co.....	141	7 95	25
	15.	" C. W. Crenshaw.....	140	27 12	9 60
	"	Mdse.....	110	309 11	7 55
	17.	Cash Standard Oil Co.....	138	14 66	45
	24.	Mdse.....	101	308 43	6 91
July	6.	"	89	99 34	1 95
	8.	Cash J. H. Davis.....	119	75	1 97
	15.	Mdse.....	80	38 50	67
	17.	"	78	146 88	2 52
	18.	Cash P. M. Athens..	107	60	1 42
	19.	" N. A. Robinson Co.....	106	54 58	1 28
	20.	" B. F. Avery & Co	105	25 25	57
	23.	" Louisville B. Co.....	102	150	3 40
	24.	" J. J. Mitchell.	101	1	01
	"	Mdse.	71	59	92
	25.	Cash B'k Athens.....	100	50	1 10
	27.	Mdse.....	70	115 40	97
Aug.	3.	Cash Cavetly & Co..	92	7 21	13
	5.	" J. B. Letter....	90	327 25	6 53
	"	" Phillips, B. & Co.....	90	9 58	20
	"	" B. F. Avery...	90	11 67	21
	"	" mdse.....	60	114 85	1 53
		Forwarded		5,238 50	153 33

	30.	"	65	800	11 55
Oct.	8.	2 b. c.....	27	87 40	52
	12.	1 "	23	45 32	22
	16.	2 "	19	80 58	33
	19.	1 "	16	50 17	17
	24.	8 "	11	378 95	92
		(14)			
		2.10 credited exchange			
		65.67 int.			
		Forwarded..		5,267 63	126 52

139 Folio 622. MEMPHIS, *Nov. 5th*, 1889.

2nd.

Henry Warten in acc't with the Schoolfield-Hanauer Company, successors to Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, No. 256 and 258 Front street.

		Am't bro't forw'd.....		5,238 50	153 33
Aug.	6.	Cash Hess, Henly Co	89	28	56
	9.	Mdse.....	56	154 05	1 92
	10.	Cash Cassety Oil Co.	85	12 32	22
	12.	" Bailey Bros...	83	30 45	56
	"	" B.F. Avery Co.	83	20 99	38
	19.	Mdse.....	46	261 46	2 66
	20.	Cash Brown & Farrel.....	75	10	16
	"	" Phillips, B. & Co.....	75	4 20	6
	21.	" J. T. Woodward.....	74	18	29
	"	" Hess, Henly Co.....	74	190	3 12
	24.	" G. L. Sherrill.	71	100	1 57
	28.	Mdse.....	37	55 75	45

		Am't bro't forw'd.....		5,267 63	126 52
Nov.	5.	Balance.....		6,420 93	65 67

Sept.	2.	Cash A.Claflin & Co. & ex	63	359	69	5	04	55 exchange.	
	9.	" Hess, Henley & Co	56	41	90		52		
	11.	Mdse	24	182	17		97		
	17.	Cash B'k Athens & ex	48	1,038	79	11	08	155 exchg.	
	18.	" C. E. Frost & Co	47	75			77		
	"	" G. L. Sherrill.	47	75			77		
	19.	Our acc't'ce Nov. 15, '89	46	2,321	40				
	20.	Cash B. Light	45	171		1	70		
	"	Mdse	15	197	08		65		
	28.	"	07	51	50		7		
Oct.	1.	Cash C. E. Frost, cash	34	100			80		
	3.	" B. L. Allen	31	156	62	1	16		
	"	Mdse	2	168	08		7		
	4.	Cash J. H. Brookins	30	551	34	2	41		
	14.	" C. E. Frost, cash	20	200			90		
	26.	Mdse	...		60		0		
Nov.	5.	Interest	...		65	67			
				11,688	56	192	19	11,688 56	192 19
Nov.	5.	Balance		6,420	93			9 b. c. on hand.	
Oct.	13.	Note taken up by us		2,500				2 "	
Nov.	5.	Int. due us on above note			12	12		11 "	
				8,933	05				

140 Folio 623. MEMPHIS, *Dec.* 14, 1889.

Henry Warten, Esq., Athens, Ala., in acc't with the Schoolfield-Hanauer Company, successors to Schoolfield, Hanauer & Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

1889.											
Nov.	5.	Balance	39	6,420	93	55	64	Oct. 31.	2 b. c	43	87 76 84
	12.	Cash J. B. Lilleen note	32	736	03	5	24	Nov. 4.	1 "	40	53 63 48
	"	" dis. on Nashv. cks	32		90		0	5.	1 "	39	42 02 36
	25.	" C. E. Frost, 317	19	490		2	05	6.	1 "	38	48 75 41
Dec.	5.	" Adair Bros. & Co.	9	265	34		52	12.	Cash	32	736 03 5 24
	"	" mdse		71	77	1	00	15.	1 b. c	29	41 46 26
	"	" C. E. Frost	9	500	00		0	16.	Cotton purchases (16 b. c.)	25	715 39 4 44
	6.	" " "	8	500			89	20.	1 b. c	24	48 78 25
	"	" Lattey	8	2			0	"	3 "	24	145 55 76
	7.	" C. E. Frost	7	900		1	40	"	1 "	24	42 27 22
	9.	" C. E. Frost	5	1,000		1	10	26.	3 "	18	132 35 52
	10.	" C. E. Frost	4	2,300		2	04	"	1 "	18	35 78 13
	"	Mdse		23	72		0	"	1 "	18	38 70 16
	12.	Cash C. E. Frost	2	400			17	"	2 "	18	105 95 41
	"	" C. E. Frost	2	500			21	"	Cotton purchases (16 b. c.)	18	758 68 3 04
	13.	" C. E. Frost	1	900			20	29.	1 b. c	15	40 94 13
	14.	Interest			52	58		Dec. 4.	Cash	10	88 93 19
								10.	1 b. c	4	47 07 4
								14.	Balance		11,853 23 52 58
				15,063	27	70	46				15,063 27 70 46
Dec.	14.	Balance		11,853	23						
June	10.	Y'r 4 mo. note due Oct. 10, '89		2,500					182 b. c. on hand.		
'89.									38 " b. l. in hand.		
Dec.	14.	Int. on note			35	54			220		
				14,388	77						

141 Folio 623. MEMPHIS, *Jan'y 9th*, 1890.

Henry Warten, Athens, Ala., in acc't with the Schoolfield-Hanauer Company, successors to Schoolfield, Hanauer & Company, wholesale grocers and cotton factors, No. 256 and 258 Front street.

1889.					1889.		
Dec.	14.	Balance	11,853 23		Dec. 16.	3 b. c	147 95
	16.	Cash C. E. Frost	450			18. 26 "	1,099 59
	17.	" "	825			" 7 "	304 50
	18.	" "	500			19. 40 "	1,767 07
	19.	" "	650			" 3 "	151 65
	"	" "	2,575			" 7 "	318 24
	20.	" "	1,850			23. 4 "	163 20
	24.	" "	2,350			24. 57 "	2,478 11
	"	" "	1,650			" 3 "	134 22
	"	" "	760			27. 9 "	390 66
	27.	" "	1,425			30. 27 "	1,158 28
	"	" "	800		Jan'y 2.	2 "	84 94
	"	" "	100			" 2 "	89 15
1890.						" 10 "	466 90
Jan'y	3.	" "	250			" 17 "	745 68
	4.	" Card, Honter & Co	21 35			" 13 "	600 30
	"	" M. V. Malone	420 68			" 11 "	483 60
	"	" C. E. Frost	800			6. 1 "	43 94
	6.	" Ransen & Williams	84 27			" 2 "	84 06
	"	" Rankin & Snyder	10 50			" 15 "	651 48
	7.	" C. E. Frost	170			" 79 "	3,485 80
	"	" "	137 85			" 2 "	100 28
	"	" "	500			7. 2 "	91 64
	"	" "	131 96			9. 35 "	1,562 20
	"	" "	2 50			" 37 "	1,595 84
	"	" "	300			" 65 "	2,812 82
	"	" "	160			" 22 "	980 02
	8.	" "	175			" 3 "	167 35
	9.	" "	210 33			" 6 "	253 57
	"	" "	80			" 18 "	766 32
	"	" "	84 18			" 53 "	2,237 96
						" Balance	3,882 53
July	9.	Balance	3,882 53				

142 Fol. 672 & 709. MEMPHIS, —— —, 188–.

Athens store in acc't with the Schoolfield-Hanauer Co., wholesale grocers and cotton factors, Nos. 256 and 258 Front street.

1890.					1890.		
Jan'y	13.	Athens stock & fixtures	8,631 24		Jan'y 24.	Cash from Athens	1,600
		Elkmont do.	2,197 84		Feb'y 8.	" " sale of mules	1,840
		Mules & horses	2,760		" 12.	" by express	800
		House & lot at Elkmont Sp'gs	250			Wool & feathers	9 19
		" " Elkmont	500		19.	Cash prem. on ex. to Miller	4 10
		3-16 int. land Jefferson Co	500		"	Mdse., J. Turrenten & Co	15 76
		19 b. c	781 11		25.	Cash by express	650
		Chas. R. Getty note	1,308 94		Mar. 6.	" to Miller for cot.	1,959 09
		Frank Petty ac	186 76		12.	" 2 b. c	86 04
		Sam. Dunnavent	13 87		14.	" D. L. Hymen, c'k	50
		Sundry ac. & notes	3,868 51		17.	" W. W. M	501 88
Feb'y	5.	Cash f'g't on mules	46 90		"	" bill, 2, 11, '90	48 12
	8.	" feed & stables	101 20		Ap'l 2.	" from W. W. M	520 44
	11.	Mdse.	48 12		"	" bill's 3, 18, '90	25 27
M'ch	18.	"	25 27		9.	" by ex. from W. W. M	250 00
	22.	Cash H. G. Miller expenses, 1, 30, '90	45 00		11.	" N. Y. check	22 35
		Cash W. W. M.'s expenses	20		21.	" R. H. Tweedy & Co., s. d.	62 65
Ap'l	8.	Mdse.	28 74		May 5.	" bill, 4, 8, '90	28 74
May	3.	"	28 71		10.	" U. S. N., c'k	227 30
	20.	"	30 44		24.	" bill, 5, 30, '90	28 71
June	12.	Cash sent J. M. Robinson & Co 357 89			28.	" by W. W. M	330 14
		Cash sent Rosenberg, F. & M 484 65	1,227 43		"	" bill, 5, 20, '90	30 44
		Cash sent Hess, Henley Co 384 89			June 12.	" cotton	105 84
						" am't p'd W. W. Miller while at Athens	113 60
						" paid M. A. W. to pay bills in Louisville	1,227 43
			22,500 08			Balance	12,562 99
							22,500 08

Balance	12,562 99	June	12.	Cash from M. A.W. for real e.	1,250
		"	"	" on ac.	750
				M. A. W. note, due July 1,'90..	500
				M. A.W. note,due Aug. 1,'90..	500
				M. A. W. note, due Sep. 1,'90..	177 31
				M. A. W. note, due Sep. 1,'90..	322 69
				M. A. W. note,due Oct., 1,'90..	500
				M. A. W. note, due Nov. 1,'90..	1,000
				M. A.W. note, due Dec. 1,'90..	1,381 63
				Balance	6,181 36
	12,562 99				12,562 99
June 12. Balance	6,181 36				

143 *Spot Notes.*

Henry Warten to Schoolfield, Hanauer & Co.

To bal. ac		2,975 79	
" int. on ac.	2,975 79 957 31 to		
	2,018 48		
Maturity of notes		48 46	
Note due Oct. 10, '85		4,127 10	
Nov. 1, "		2,069 77	330 17
" 15,		2,076 45	165 57
Dec. 1,		2,083 10	166 11
15,		1,383 77	166 64
1 yr. int. on notes		939 19	110 70
		15,703 63	939 19
Notes due Oct. 15, '86		5,502 27	
" Nov. 1, "		2,769 34	
" 15,		2,774 56	
Dec. 1,		2,781 74	
15,		1,875 72	
		15,703 63	
		1,875 72	
Diff. in com	26 42		
" " salt	11 00		
" " interest	1 20		
		38 62	
		1,837 10	

144 Q. In whose handwriting are these accounts?

A. Mine, sir.

Q. State to the jury the manner in which these accounts are kept and these statements rendered.

A. I had no regular time for making these statements; sometimes two or three months, or maybe six months, would elapse before I made out a statement.

Q. Are these statements in your handwriting?

A. Yes; and they include all the transactions with the house—cash paid out, merchandise sold, and cotton, etc.

Q. Where did these statements come from?

A. From our ledger.

Q. Yes; but I mean where did you get them?

A. They were rendered Mr. Warten, as indicated there at the beginning of the statement.

Q. Read that statement to the jury.

A. This is the last statement rendered him. They were notes due

Schoolfield, Hanauer & Co. The statement was rendered Jan'y 9, 1890, and is for notes taken to close his account with Schoolfield, Hanauer & Co. One note is dated May 22d, 1889; one note, with interest from date, due Nov. 1st, 1889, $5,000; May 22nd, 1889, one note, with interest from date, due December 1st, 1889, $5,000; May 22nd, 1889, one note, with interest from date, due January 1st, 1890, for $3,787.94; one note dated June 10th, 1889, due four months after date, for $2,500, with interest from date, amounting to $17,052.40.

Q. That was the balance due Schoolfield, Hanauer & Company?

A. Yes, sir.

Q. Did you ever see those notes?

145 A. Very frequently.

Q. In whose possession?

A. Schoolfield, Hanauer and Company's.

Q. They were held as indebtedness against Warten?

A. Yes.

Q. How was that account of Schoolfield, Hanauer & Company kept, and where did you get the data to post the books? Did they keep a regular set of books?

A. Yes, sir; I got the data from the cash book and journal.

Q. And every once in awhile you made out a statement of his account and sent it to him?

A. Yes, sir.

Q. Look at this account I now hand you and explain that to the jury.

A. This is a statement of the charges and credits from Henry Warten's account to the Schoolfield-Hanauer Company.

Q. From what time?

A. From December 14th, 1889, up to January 9th, 1890.

Q. What balance was owing?

A. $3,882.53; it is an open account.

Q. What has become of those notes given to close the Schoolfield, Hanauer & Company matter—the notes for five and three thousand dollars?

A. I don't know where they are; they are not in our possession.

Q. And have not been since when?

A. Not since this statement was rendered.

Q. When was that?

A. Jan'y 9, 1890.

Q. Examine these notes (handing witness notes) and state what you know about them and the connection they have with the statement.

146 A. These are the notes referred to in the statement (reads):

$5,000.00. ATHENS, ALA., *May* 22, 1889.

On or before November 1st, after date, I promise to pay Schoolfield, Hanauer & Company five thousand dollars, with interest from date.

HENRY WARTEN.

2.

$5,000.00. ATHENS, ALA., *May* 22, 1889.

On December 1st, after date, I promise to pay Schoolfield, Hanauer & Company five thousand dollars, with interest from date.

HENRY WARTEN.

3.

$3,787.94. ATHENS, ALA., *May* 22, 1889.

On January 1st, after date, I promise to pay to the order of Schoolfield, Hanauer & Company thirty-seven hundred and eighty-seven and $\frac{94}{100}$ dollars, with interest from date.

HENRY WARTEN.

4.

$2,500. ATHENS, ALA., *June* 10, 1889.

Four months after date I promise to pay to the order of Schoolfield, Hanauer & Company two thousand five hundred dollars, payable at the office of the Schoolfield-Hanauer Company, with interest from date.

HENRY WARTEN.

This last was a note that Henry Warten sent to us to have discounted for him.

Q. Who is it made payable to?

A. Schoolfield, Hanauer & Co.

Q. What became of that note?

147 A. It was discounted and the proceeds placed to his credit.

Q. What was the amount of the proceeds?

A. Twenty-four hundred dollars and something. It was placed to the credit of Henry Warten on the books of the Schoolfield-Hanauer Company.

Q. As a matter of fact the open business with Schoolfield, Hanauer & Company had ceased?

A. Yes, sir.

Q. And in order to give him the benefit of that note it was taken up by the Schoolfield-Hanauer Company?

A. Yes, sir.

Q. And therefore the Schoolfield-Hanauer Company, having taken up the note and discounted it, simply charged him for it?

A. Yes, sir.

Q. In June, then, Warten sent a note payable to Schoolfield, Hanauer & Company when his business was with the Schoolfield-Hanauer Company?

A. Yes, sir.

Q. Who composed the corporation?

A. Mr. W. W. Schoolfield, Mr. H. G. Miller, and, at that time, Mr. Lewis Hanauer. They were the largest stockholders.

Q. What sort of business was Schoolfield, Hanauer & Company doing?

A. They were wholesale grocers and cotton commission merchants on a large scale.

Q. As much as $200,000?

A. Yes.

Q. More than that?

A. Yes; more than $200,000 a year.

Q. The Schoolfield-Hanauer Company is still in business, is it not?

A. Yes, sir.

148 Q. In these statements I see a charge, a number of payments "to your draft." What about that?

A. They were Warten's sight drafts on Schoolfield, Hanauer & Company.

Q. Is or is it not a fact that a considerable amount of that money was advanced by Schoolfield, Hanauer & Company to other parties?

A. Yes, sir; it was.

Cross-examination by MELTON HUMES, Esq.:

Q. When did the firm of Schoolfield, Hanauer & Company cease to do business?

A. In the spring of 1889.

Q. What time in the spring of 1889?

A. April 1, 1889.

Q. And the corporation The Schoolfield-Hanauer Company commenced about the 1st of April, 1889?

A. Yes.

Q. How much was Warten indebted to the Schoolfield-Hanauer Company on the 9th day of January, 1890?

A. $3,882.53.

Q. How much was he indebted to Schoolfield, Hanauer & Company?

A. $17,032.40.

Q. These accounts were all drawn up and interest calculated up to January 9, 1890?

A. Yes.

Q. This indebtedness of $17,032.40 of Henry Warten to Schoolfield, Hanauer & Company was an indebtedness created with him by that firm while they were in existence?

A. Yes.

Q. And that firm went out of business about April 1, 1889?

A. Yes; quit selling goods that day.

Q. He had no business with the firm of Schoolfield, Hanauer & Company after the first day of April, 1890?

A. Only that one transaction of the $2,500 note, dated June 10th, 1889.

149 Q. In whose handwriting is the body of this note?

A. Henry Warten's.

Q. And is this his signature?

A. Yes, sir.

Q. This note bears date June 10, after Schoolfield, Hanauer & Co. had gone out of business?

A. Yes, sir.

Q. This note is payable to the order of Schoolfield, Hanauer & Company at the office of the Schoolfield-Hanauer Company, drawn in favor of Schoolfield, Hanauer & Company, endorsed by the Schoolfield-Hanauer Company?

A. Yes.

Q. That $2,500, you say, Warten got credit for on his account with the corporation?

A. Yes, sir.

Q. These statements that you have got here show a balance due to the Schoolfield-Hanauer Company of $3,882.53; has that been paid?

A. Part of it has been paid. Warten sold out to Schoolfield, Hanauer & Company to secure that indebtedness.

Q. Was this part of the indebtedness settled by that sale?

A. Yes, sir.

Q. I thought you stated that this debt of $17,032.40 was settled in that sale?

A. No; I never stated what was settled. The $3,882 was the indebtedness due the two together, Schoolfield, Hanauer & Company and the Schoolfield-Hanauer Company. He sold out to the Schoolfield-Hanauer Company.

Q. How?

A. I don't know anything about it; it was done in Athens and I was in Memphis.

Q. I understand from this statement here that here is a
150 note of $5,000, dated May 22d, 1889, due Nov. 14th, 1889?

A. Yes, sir.

Q. Now, that was a part of the indebtedness of Henry Warten to the firm of Schoolfield, Hanauer & Company?

A. Yes, sir.

Q. Then the next item on that statement is a note of the same date, for $5,000, due December 1st, 1889; that note is also a part of his indebtedness to the firm of Schoolfield, Hanauer & Company?

A. Yes.

Q. The next item is a note of the same date, due January 1, 1890, for $3,787.94; that is also due to the firm of Schoolfield, Hanauer & Company and is part of the indebtedness to them?

A. Yes.

Q. Then there is another note given June 10th, 1889, for $2,500, payable four months after date. You say that note also is part of the indebtedness of Warten to Schoolfield, Hanauer & Company and is charged up in that way?

A. Yes.

Q. Then the interest on those four notes from the day they fell due to Jan'y 9th, 1890, was $744.46?

A. Yes; from the date they bore interest.

Q. What rate of interest did you calculate on them?

A. I don't know; we generally charged 8 per cent.

Q. That makes the $17,032.40. How was that indebtedness settled?
A. Henry Warten sold out to Schoolfield, Hanauer & Company what he had to sell.
Q. At the same time he was owing on January 9th, 1890, to the Schoolfield-Hanauer Company $3,882.53?
A. Yes.
Q. How was that settled?
A. I suppose in the same way.
151 Q. It has been settled, then?
A. Yes; he does not owe this to the Schoolfield-Hanauer Company. It has been squared off on our books—not by payment in full.
Q. Why not by payment in full?
A. Because part of it has been charged to profit and loss.
Q. Where is the statement of that account?
A. I don't know anything about the sale of those goods.
Q. You kept an account of the sale of his goods on your books?
A. Yes; on the books of the Schoolfield-Hanauer Company, and also on the books of the old firm.
Q. How did you keep the account?
A. In a regular business way.
Q. When anything was realized from the sale of the property that account was credited with that?
A. Yes.
Q. Has that account been settled?
A. It has been squared on our books; part of it has been charged to profit and loss.
Q. On whose book?
A. Both the firm's and the corporation's.
Q. And you don't know how much that is?
A. No, sir.
Q. And you have no statement of that with you?
A. No, sir.
Q. You were not directed to bring a statement of that?
A. No.
Q. Now, the whole amount of this indebtedness would be the $17,032.40 and the $3,882.53 added together?
A. Yes, sir.
Q. How does that account stand on the books of Schoolfield, Hanauer & Company?
152 A. The heading is Henry Warten, Athens, Ala.
Q. And then he is charged with this indebtedness, and then the account is credited with all amounts received on account of these things by the sale of this property?
A. Yes.
Q. That account has been closed on the books. When was it closed?
A. I don't remember exactly.
Q. About when?
A. I don't know that I can approximate it.
Q. Was it closed this year?

A. Yes, sir.
Q. How long ago?
A. Several months ago.
Q. When Schoolfield, Hanauer & Company sold out to Mrs. Warten?
A. Yes; about that date.
Q. When was that?
A. I don't remember.
Q. How does that transaction appear on the books?
A. After the sale was made I kept several accounts on the books. As long as we were in possession of the stock of goods at Athens I kept an open account with the Athens store and goods sold to Mrs. Warten—her notes were credited to the Athens store.
Q. And at the same time this account of Henry Warten's was credited?
A. No; not at the same time; we credited it with the stock of goods.
Q. Then the Henry Warten account did not show that?
A. That was all since January (since the last statement), and I can't go into details and tell you all about it.
Q. You say this account was on the books under the heading of Henry Warten?
A. Previous to the sale, of course, it was.
153 Q. I asked you in reference to the account that you kept as regards the sale of this stock of goods and other property afterwards, and I understood you to say it was opened under the head of Henry Warten.
A. You misunderstood me, then; we did not have any other account with Warten.
Q. Then the heading was not Henry Warten, but the Athens store?
A. Yes.
Q. How was the account opened?
A. I- was an open account.
Q. What was charged?
A. We charged what was paid for the stock.
Q. What was paid for it?
A. I don't recollect exactly.
Q. Did you have an account with the Athens store on the books of the partnership?
A. All the money that was received was on our books. We even had an account with Schoolfield, Hanauer & Company on the books of the Schoolfield-Hanauer Company.
Q. What amount did Henry Warten get credit for in the sale of this stock of goods on the books of the corporation?
A. I don't remember the amount.
Q. Did he get credit for anything?
A. I suppose he did. I am quite sure he did.
Q. What amount did he get credit for on the books of Schoolfield, Hanauer & Company?

A. A good deal more than he did on books of the Schoolfield-Hanauer Company, because his debt was larger.

Q. What amount have Schoolfield, Hanauer & Company
154 realized from the property they got from Wharten?

A. I do not know the exact amount.

Q. Is it more than the entire indebtedness to Schoolfield, Hanauer & Company—$17,032.40?

A. No, sir.

Q. Including the amount of credit they got from Mrs. Warten from the sale to her is it not more than the amount that was due to Schoolfield, Hanauer & Company?

A. I can't say it was.

Q. You cannot say it was not that much?

A. The exact amount I could not say.

Q. When was the sale made to Mrs. Warten?

A. I don't know the date.

Q. About what time?

A. Some time last spring—May or June.

Q. This statement of the account with the corporation, does it show what was paid by Warten to the corporation during the year 1889—the latter part of the year?

A. Yes; and what was charged, all transactions, the dates correspond with the dates the payments were made.

Q. Has Mrs. Warten an account with your firm?

A. Yes, sir.

Q. What is the amount of that account?

A. I do not remember the amount.

Q. Is she running the same store?

A. Yes; in Athens at the same store.

Q. Who manages the business?

A. I have no idea.

Q. Do you know Henry Warten's handwriting?

A. Yes.

Q. Who does the correspondence?

155 A. Henry Warten.

Q. Then, so far as you know, he is the manager of that business?

A. I suppose so, but it is run in the name of Mrs. Warten.

Q. What is her full name?

A. Mrs. M. A. Warten.

Q. Whilst you kept an account with the Athens store and before Mrs. Warten took charge did not Henry Warten have the management of the business there?

A. No, sir.

Q. Who carried on the correspondence with your firm?

A. Walter Miller.

Q. In whose handwriting is it?

A. Walter Miller's.

Q. Was not Mr. Warten there?

A. I don't know.

Q. Don't you know he was there aiding and assisting in the conduct of the business there?

A. I expect he rendered a good deal of assitance; that is all surmise.

Q. Does your account show that he was paid anything for his services?

A. No, sir.

Q. How long was that Athens store run in the name of Schoolfield, Hanauer & Company?

A. From January 13th, 1890, to the time Mrs. Warten took it; the account on our ledger was just the Athens store.

Q. Were any goods bought for that store from any other store except your own?

A. Indeed, I couldn't tell you, sir.

Q. Why is it that you bring down the interest on these accounts to January 9th, 1890?

A. That was the day the account was made up to; the interest accrued to that day.

Q. When was that done?

A. I suppose about the 9th.

Q. On the 9th or after?

A. It is reasonable to suppose it was done on the 9th of January.

156 —. Do you know as a fact when it was done?

A. No; but from the date I am quite sure it was done on the 9th.

Q. Your firm's books are in Memphis?

A. Yes.

Q. That is your headquarters?

A. Yes, sir.

Q. Where was Mr. Miller on the 9th day of January, 1890?

A. I do not remember, sir.

Q. Did you furnish him with a statement of what was due on the 9th day of January, 1890?

A. If that statement was made up on the 9th day of January, I furnished him with it then.

Q. What did you make that statement for?

A. For finding out the amount of his indebtedness to the firm and to the corporation to that date.

Q. You do not know anything about goods being ordered for the store during the time it was being run?

A. No, sir; nothing about it.

Re-examination by Mr. POSTON:

Q. When those notes were made that you speak of did not that close Henry Warten's account with Schoolfield, Hanauer & Company?

A. Yes, sir.

Q. Then it went to bills receivable?

A. Yes, sir.

Q. Is there anything else except a settlement of those notes on his account?

A. No; the account was closed by those notes.

Q. When that business was taken possession of over there at Athens who was in possession of the property?

A. Schoolfield, Hanauer & Co.

Q. Who was their manager?

A. W. W. Miller.

Q. Was he an employee of Schoolfield, Hanauer &
157 Company?

A. Yes.

Q. You do not know who his employees were there?

A. No, sir.

Q. The stock that you took from Henry Warten, how does that appear on your books? Does that appear for merchandise sold?

A. For merchandise bought. We opened an account and charged it to the Athens store.

Q. What was the shape of Warten's account?

A. His account was credited for what was paid him.

Q. And the Athens store was run as a separate account?

A. Yes; his name did not appear.

Q. When this purchase, as you understand it, was made by the Schoolfield-Hanauer Company of Henry Warten was there any further liability shown on your books of Henry Warten to those two companies?

A. Yes.

Q. In what shape was it?

A. The Schoolfield-Hanauer Company account was an open account. We have closed it by profit and loss.

Q. In other words, whatever losses have been sustained you have credited by proceeds?

A. Yes.

Q. Now, after this purchase and sale, does Henry Warten again appear on your books in any liability to either the firm or the corporation? In other words, did that purchase close up his indebtedness to the two?

A. Yes.

Q. The next account that was opened was what?

A. The Athens store.

158 Q. Has that been closed?

A. Yes; it was closed by some notes realized from the sale.

Q. Did you open an account with Mrs. Warten?

A. We have an open account for transactions of subsequent date.

Q. When was that account with Mrs. Warten opened?

A. Some time in June, I think; it might have been a little before.

Q. Has that account been opened since April?

A. Yes; it has been opened since then.

Recross-examination by Mr. HUMES:

Q. How much was Mrs. Warten to give Schoolfield, Hanauer & Co.?

A. I don't know the amount.

Q. How was it ascertained as to what she was to give for the goods?

A. There was some agreement entered into between the purchaser and Schoolfield, Hanauer & Company.

Q. There was some other property besides that stock of goods?

A. Yes, sir.

Q. Has that been disposed of?

A. Yes; everything.

Q. There were some mules and live stock; have they been disposed of?

A. Yes; they were sold while Schoolfield, Hanauer & Company were in possession.

Q. Were they sold for cash or on credit?

A. For cash.

Q. Whereabouts?

A. In Memphis; to a stock dealer there.

Q. What became of the debts transferred?

A. I don't know about that.

Q. They don't appear on your books?

A. No, sir.

Q. No claims that were transferred to Schoolfield, Hanauer & Company by Warten appear on your books at all?

159 A. There is a list of accounts that we had a memorandum of.

Q. What was the amount?

A. I don't know; I don't know that I could approximate it.

Q. About how much?

A. I have not the remotest idea, sir.

Q. How many of them were there?

A. I have no idea.

Q. Were there a good many?

A. Right many.

Q. What do you call "right many"?

A. A dozen or two or more.

Q. And you would say there were a dozen or two or more of those claims?

A. Yes, sir.

Q. How were those claims secured—by mortgage by the parties who owed them?

A. I do not know; that pertains to Mr. Warten's business with these customers of his; I don't know whether he took mortgages or not.

Q. Have the claims been collected?

A. I don't know.

Q. Do they appear on your books at Memphis?

A. We kept no account with them; it is all embraced in what we bought.

Q. What do your books show has been done with them?

A. Our books don't show that anything has been collected on them at all.

Q. What has become of them?

A. Whatever were uncollected at the sale, I suppose, were turned over to her. I suppose during the time the Athens store was in existence some collections were made on those accounts.

Q. What is Mrs. Warten's indebtedness to the firm of Schoolfield, Hanauer & Company?

A. I do not remember the amount.

Q. What security have they for the payment of it?

160 A. I suppose there is a certain amount of risk. We have no security whatever.

Q. You have just her personal obligation; no security, either personal or property?

A. None that I know of.

Q. Is not Mr. Henry Warten security for her?

A. I don't know. I would not consider him very good security. He is a busted merchant.

Q. What is about the amount of her indebtedness to the firm?

A. I really could not tell you.

Q. She has been dealing with you all the year since she took charge of the business there?

A. Yes.

Q. You stated that your firm was engaged in the cotton-brokerage and wholesale grocery business?

A. Yes.

Q. How is Mrs. Warten stated in the commercial agency?

A. I have never referred to it.

Q. You have books of that kind that you can refer to when you give anybody credit?

A. Yes.

Q. Have you that with you?

A. No.

Q. What commercial agency is it?

A. R. G. Dunn & Co.

Q. But she is indebted to Schoolfield, Hanauer — Company on account of this business?

A. Yes.

Re-examination by Mr. POSTON:

Q. As a matter of fact you heard nothing about the details of the sale between Mrs. Warten and Schoolfield, Hanauer & Company, and you know nothing about it further than that they did not make a sale to her?

A. Yes; that is so.

161 Claimants offer in evidence in connection with the testimony of this witness 59 statements of account of Henry

Warten with Schoolfield, Hanauer & Company, the first being dated Nov. 8th, 1881, and the last bearing date May 22d, 1889; also 5 statements of account of Henry Warten with the Schoolfield-Hanauer Company, dating from Nov. 5th, 1889, to Jan. 9th, 1890; also one statement of account of the Athens store with the Schoolfield-Hanauer Company, dated —, 1890; also the four notes of Henry Warten to Schoolfield, Hanauer & Company (see page- 41, 79, &c., to 144 of this transcript).

Claimants then introduced JAMES F. MCGAVOCK, who testified as follows:

Direct examination by Mr. MCCLELLAN:

Q. Are you a citizen of Limestone county?
A. Yes, sir.
Q. How long have you been there?
A. —. I have been in the county since 1863 off and on, and have been in Athens since 1883.
Q. What business have you been in since you were old enough to be in business?
A. I have been a clerk most of the time.
Q. Were you ever a clerk for Henry Warten?
A. Yes; I went to work for him on August 25th, 1883.
Q. Did you stay with him until he broke?
A. Yes; with the exception of ten months when I was absent.
Q. Were you one of his clerks when he broke on
162 Jan'y 13, 1880?
A. Yes.
Q. Were you present when a bill of sale was executed from Henry Warten to Schoolfield, Hanauer & Company?
A. Yes. (Witness identifies bill of sale.) I was not a witness to it.
Q. Was Ros. Hine a witness to it?
A. Yes.
Q. How did he come to be there, if he was there; did you go after him or send for him?
A. I went after him myself, I think.
Q. What time of the day was that bill of sale executed?
A. About five in the morning.
Q. Before or after breakfast?
A. Before.
Q. Before or after daylight?
A. It was after daylight.
Q. Do you know what time the freight train was due going towards Elkmont?
A. Yes; about half after five or six.
Q. Did Mr. Miller or Warten or both of them go on that train to Elkmont?
A. Yes; both of them.
Q. After this bill of sale, what became of the possession of the goods in that store?

A. Mr. Miller took possession of the keys and locked the house and started to Elkmont with Mr. Warten.

Q. How long was it before he opened up the store?

A. They returned at 11 o'clock. Mr. Miller stayed in that house till it was closed.

Q. It was closed by the marshal?

A. Yes.

Q. Was the store open for business in the meantime?

A. Miller was staying there.

Q. Was it open for the sale of goods?

A. I don't remember that we sold any goods. He was in the store, however.

Q. Were you employed by Miller as clerk?

A. Yes, sir.

163 Q. What was your contract with him?

A. I had none until later. He said he would continue my salary, $75 a month.

Q. What did you do for him?

A. I looked after some collections and got some accounts settled up and went out to see about some live stock. I went out that morning to notify Mr. Black that the stock was sold to Miller.

Q. How long were you handling the stock before they were disposed of?

A. I think it was Tuesday week before. I sold Mr. Hill and Dr. Westmoreland some.

Q. Did Dr. Westmoreland have a part in Mr. Hill's lot jointly or severally?

A. Hill bought five individually and he and Hill bought ten. Hill gave for the five $320 and Hill and Westmoreland gave for the ten $225.

Q. What became of the other live stock?

A. 23 head were shipped to Memphis.

Q. How many head were there in all?

A. I don't remember; I think there were four or five others.

Q. Taking the whole lot together in bulk on the 13th day of January, 1890, what would have been a fair, reasonable price for them in cash?

A. I thought they ought to be worth $2,500 or $2,600.

Q. What was the character of the stock?

A. Some of it was very poor and old; some of it was good, but thin.

Q. Were they mules that had been paid in to Warten by his customers in the country?

A. Yes.

Q. You were of course familiar with the stock of goods in the store?

A. I was.

164 Q. Did Mr. Warten lay in his usual stock of goods for the fall trade last year?

A. Not quite as heavy; very nearly——

Q. Do you know from what firms he bought goods?

A. He bought from Bamberger, Bloom & Company, Hess, Henle & Company, and some in New York and St. Louis and in Cincinnati and in Memphis.

Q. Can you come anywhere near to how many houses he returned goods he bought of them?

A. We returned goods to nearly all of them. We returned to New York some goods; to Cincinnati some.

Q. Then there was not in the store on the 13th day of January, 1890, the usual amount of goods?

A. No.

Q. What would have been a reasonable fair price for that stock of goods on a reasonable cash valuation?

A. I would think between $4,500 and $5,000.

Q. In selling that stock of goods in that situation how much discount would have been reasonable to come off the cost price?

A. I don't think any business man would have bought the stock he had at fifty per cent. discount. I think 50 per cent. was very high.

Q. Was his stock kept up continuously until he broke?

A. Yes.

Q. When did he go into business?

A. In 1882.

Q. How long did Miller run the business there?

A. Till about the first day of June, I think.

Q. Was he there in charge, or who was?

A. He was part of the time, and his son, Walter Miller, part of the time after Mr. Henry Miller left.

165 Q. In whose name was the business carried on?

A. The Schoolfield-Hanauer Company.

Q. Did Walter Miller run a bank account there?

A. He was attending to the money matters. I don't know whether in his own name or that of the firm.

Q. Did Henry Warten have anything to do with the money?

A. Not that I know of.

Q. When was he first employed there as clerk?

A. I think about the middle of February.

Q. After he sold out did he go into any other business?

A. He went to Birmingham; made two trips there and made one trip to Gadsden.

Q. Do you know what was his business there?

A. I think he went to go into business.

Q. Do you know whether he made any provisional engagements as drummer?

A. He said he did.

Q. Do you know any reason why he did not become a drummer or take employment as a drummer?

A. I do not.

Q. Was it suggested at all that he become a clerk; how did it come about?

A. Mr. Miller had mentioned to me his being well acquainted with the trade, and he thought he would be valuable as a salesman.

Q. I believe you were to get $75 a month?
A. Yes.
Q. Was Miller going to make a permanent thing of it or was he debating whether he would carry the goods to Memphis?
A. He was debating going to Memphis.
Q. Were you about to leave the employment?
A. Yes; I thought of leaving.
166 Q. Was it in this connection that Mr. Miller saw Warten?
A. Yes; I had a chance to go to Columbia, and thought of accepting it when I heard Mr. Miller debating going to Memphis.
Q. Was it in that condition of things that Henry Warten was employed?
A. I thought so; I am not positive.
Q. Had you employed Warten before that?
A. Yes, sir.
Q. For what purpose?
A. I was made assignee after the assignment of Henry Warten, and employed him to make an inventory.
Q. Did Warten make a general assignment?
A. I don't know what you mean by a general assignment.
Q. I mean an assignment of all his property.
A. Yes; he made a general assignment.
Q. Did you make an inventory?
A. Yes.
Q. What did it consist of mainly?
A. Accounts and mortgages.
Q. Who made out that schedule or inventory of the assetts for you?
A. Henry Warten & John Tanner.
Q. How long did it take them to make out that inventory?
A. Some little time.
Q. What was the whole amount of that inventory?
A. I think about $53,000 or $55,000.
Q. How many notes and accounts and mortgages were set forth in that assignment?
A. I think it all consisted of that; I don't know how many there were.
Q. The aggregate amount was about $53,000?
A. Yes.
Q. Did you make any effort to get up the money on these notes?
167 A. Yes, sir; I did collect some.
Q. Why did you get Henry Warten to make out that inventory?
A. He was familiar with the property and I was not. In the first place, some of the attorneys insisted upon statements being made right away. I consulted you (Mr. McClellan) as to whom to employ.
Q. How long was Henry Warten in your employment as trustee under that general assignment?
A. Until about February 1st.
Q. Was it after that that he went to Birmingham and Gadsden?

A. I think he made one trip before and one after that.

Q. What was Henry Warten's business about the store after Miller hired him?

A. He was there as salesman; he was the head clerk in the house.

Q. Who was in control of the house?

A. I considered Walter Miller.

Q. On how many men, according to your best recollection, were these various debts that went into that general assignment?

A. An immense number of them. I suppose there must have been between 500 and 600.

Q. Warten worked there under the direction and control of Henry Miller?

A. Yes.

Q. Did any considerable number of his old customers come to the store after he went there as clerk?

A. A great many of them.

Q. Is he a popular business man in the community?

A. Yes.

Q. Did he or not do there the largest mercantile business in the county?

168 A. It was always considered so.

Q. Do you know anything about the stock of goods at Elkmont?

A. Yes; I went there for Miller, after the assignment.

Q. Did you make any effort to sell those goods to anybody?

A. Yes; to Mayor Legg and Mr. Vaughn and Mr. Griffin.

Q. What success did you have?

A. I did not sell the goods.

Q. Did you get any offers for any of them?

A. I don't think I got a direct offer. I thought I had an indirect offer from Mayor Legg. I think he offered about $1,850 for the business house and the stock of goods and the lot on which the house was situated.

Q. Were you up at that store at any time before Mr. Warten sold it?

A. Yes; I was up there several times.

Q. Who had charge of it for Mr. Warten?

A. Mr. J. W. Strain.

Q. On or about January 13th, 1890, what was a fair, reasonable price for that property there—the stock of goods, the store fixtures, and the real estate—in order to be sold for cash?

A. I don't know. I don't think his offer was quite enough. I think I asked him about $2,100.

Q. Was that reasonable at that time in cash?

A. Yes; but that was not a cash transaction.

Q. The goods were afterwards removed to Athens, were they not?

A. Yes; not a great while after.

Q. Do you know anything about whether or not Mr. H. G. Miller for several months previous to January 13th, 1890, was there

169 in the interest of his house, Schoolfield, Hanauer — Company, to collect money from Henry Warten?

A. I know he was there, but don't know his business.

Q. He made several trips there, from the early part of the fall to January 13th, did he not?

A. I could not say, positively.

Q. Do you know anything about the indebtedness of Mr. Henry Warten to Schoolfield, Hanauer & Company?

A. I do not.

Q. Who kept the books?

A. He did.

Q. When did you begin to take the inventory

A. We began to take it about the first of January.

Q. Was that the usual time for taking it?

A. No; we usually took it about the latter part of July or the first of August.

Q. Why did you take it then?

A. Because Mr. Warten was at the springs in the summer; he generally went there for the summer season.

Q. How long was he there?

A. I think he went that year about the 1st of July and stayed until the latter part of August.

Q. Who helped you to take the inventory?

A. Mr. Markham and Mr. Estes, and John Tanner kept the copy.

Q. How long did it take you to get up the inventory?

A. Three or three and a half days.

Q. Did you put the goods above or below cost?

A. Some at cost, some below, and some above.

Q. What was the average?

A. It was below cost.

Q. How much below?

170 A. I suppose it was ten per cent. less than cost.

Q. You think the stock of goods was worth about 50 per cent.?

A. I don't think any business man would have given that for it.

Q. Have you any idea about what per cent. has been realized out of the goods since, so far as the sales have gone?

A. No, sir.

Cross-examination by MILTON HUMES, Esq.:

Q. In what business are you engaged now?

A. I am salesman in the house of Mrs. Warten at Athens.

Q. How long have you been in her hire?

A. Since, I think, about June 1st, 1890.

Q. Before that in what business were you?

A. In the same business in that house.

Q. This assignment to you as assignee; when was it made?

A. It was made January 13th, 1890.

Q. What time in the day?

A. Just about the time the train comes in from Elkmont—about eleven o'clock. We went directly from there to the court-house.

Q. Who prepared that assignment?

A. I think Mr. McClellan did.

Q. Who prepared the bill of sale of this stock of goods to Schoolfield, Hanauer & Company?

A. I don't know.

Q. When was that assignment prepared?

A. I don't know.

Q. When did you first see it?

A. On Jan'y 13th.

Q. When was the invoice made out of the property in the assignment?

A. It began as soon as the house was open after the sale,
171 which was, I think, on the following Tuesday.

Q. You say this bill of sale to the Schoolfield-Hanauer Company was signed on the morning of the 13th, about 5 o'clock?

A. Yes.

Q. And this assignment was signed about what hour?

A. About 11 or 12 of the same day.

Q. Where was Henry Warten between the time the bill of sale was signed and the assignment was signed?

A. He and Miller went up the road, I think, about 6. The bill of sale was signed before they went up the road. I think they went to Prospect, Tennessee.

Q. What did they go up there for?

A. My understanding was, to fix up a bill of sale of other property.

Q. What other property?

A. I think Mr. Warten owned some property at Elkmont Springs.

Q. And they went up to Prospect to fix up the papers relating to the property in Tennessee?

A. Yes.

Q. Was that assignment signed immediately on their return?

A. As soon as we could go to the court-house.

Q. Was the paper prepared for Warten's signature when he returned?

A. I think so.

Q. What property in Tennessee was it that was transferred?

A. I think it was a house and lot at Elkmont Springs.

Q. The real estate that was sold by Warten to Schoolfield, Hanauer & Company in the bill of sale—whose property is that now?

A. Mrs. Warten's.

Q. When did she buy it?

A. When she got the business—about June 1st.

Q. Do you know what she paid for it?

A. No.

172 Q. You say that you took an inventory of the property that passed to you under that deed of assignment. What was that?

A. Notes and accounts and mortgages principally.

Q. What was the actual worth of it?
A. We thought about $2,400 or $2,500.
Q. Have any dividends ever been declared on that?
A. Not that I know of.
Q. The actual worth, according to your valuation at that time, was about $53,000?
A. Yes; solvent claims.
Q. Who assisted you in that appraisement?
A. Mr. Sikes and Mr. Davis.
Q. You state in answer to a question from the other side that there were a good many of the old customers who came back there after Warten went into the store. Was not that the understanding when Warten made this sale?
A. I did not hear of it, sir.
Q. Did you hear Warten make that statement to various customers who were there after the bill of sale and after the stock of goods were turned over to Miller?
A. I don't remember it.
Q. It is a fact that they have been taken care of, is it not?
A. Yes.
Q. You say that Warten went off to Birmingham after the sale to Schoolfield, Hanauer & Company?
A. Yes, sir.
Q. How long was he gone?
A. I think his first trip was three or four days.
Q. Did the store remain closed for any length of time after the sale?
A. Only while attached.
Q. How many days after the sale was it attached?
173 A. The bill of sale was on Monday and the attachment was on the next Thursday.
Q. Was the store open on the evening of the bill of sale?
A. Yes, sir.
Q. And on Tuesday and Wednesday?
A. Yes.
Q. And it was opened again on the day the property was replevied?
A. Yes, sir.
Q. How long was Warten absent?
A. I think about four days or a week.
Q. How long was he out of that business?
A. I had an office in the store as assignee; about ten days after the stock was replevied he went to work for me.
Q. He was in there, then, about ten days after and has been there ever since?
A. Yes; most of the time.
Q. When did he become the manager for Schoolfield, Hanauer & Company there?
A. I don't think he ever occupied that position.
Q. Wasn't he advertised as manager?
A. I would not state positively that he was.

Q. Would you state that he was not?
A. No, sir.
Q. Don't you know that he was there afterwards managing the business just as before?
A. I know he was there in the business.
Q. You know you were there as a clerk under him?
A. Yes.
Q. Were there not some goods bought by him for the store?
A. Yes, sir.
Q. Did he go off to buy those goods?
A. Yes, sir.
Q. When?
A. In May, I think.
Q. Before the store was turned over to Mr. Warten?
A. Yes.
Q. Was it not before the last term of the court here that he went off to buy goods?
A. I could not state; it was in the spring.
174 Q. Would you not say he was manager of the business if he was over the clerks there and went off to buy goods?
A. We regarded Mr. Miller as manager.
Q. You say you do not remember his being advertised as manager?
A. I remember the business being advertised, but don't know whether he was advertised as manager.
Q. I understood you to state that he returned some of the goods he bought. Did he return any to Bamberger, Bloom & Co.?
A. I don't remember that he did.
Q. Did he not purchase goods to replenish the stock, just as he always had done, previous to that bill of sale and did he not go on to the cities to buy?
A. He went on replenishing the stock, but not in the same quantity.
Q. When was the Elkmont stock of goods removed to Athens?
A. Some time during January or maybe the first part of February.
Q. Was it before or after this attachment?
A. After the attachment.
Q. So the Elkmont stock of goods was not in the attachment?
A. No, sir.
Q. Do you remember seeing that advertisement before (showing witness advertisement in "Athens Courier" of April 24th, 1890; see p. 71, 180)?
A. Yes; I believe I do remember it now.
Q. Was it not before that that he went out and replenished the stock of goods by purchasing in the cities?
A. I don't remember.
Q. Is it not your recollection that it was before?
A. I could not say even now.
Q. Is it not the custom of merchants, in purchasing goods, to go on before April?

175 A. Yes; sometimes in March, and then we have gone on as late as April.

Q. You assisted in taking the inventory of that stock of goods?

A. Yes, sir.

Q. It was taken between the 1st of January and the day of the sale?

A. Yes, sir.

Q. You say the reason it was not taken in July and August was because Mr. Warten was absent at the springs?

A. Yes, sir.

Q. How many days was Miller there before this bill of sale?

A. He was there the Saturday before.

Q. Was he there the day previous to Saturday?

A. I do not think he was; I think he arrived there on Saturday.

Q. Was he there at Warten's store with him?

A. Yes, sir.

Q. All day Saturday?

A. I don't remember that he was there all day.

Q. Were they there at the store on Saturday night?

A. I don't think they were.

Q. Were you there on Saturday night?

A. Yes, sir.

Q. Was anything said to you or in your hearing of the proposed sale of this stock of goods?

A. No, sir.

Q. When did you first learn of it?

A. On Monday morning.

Q. What time in the morning?

A. About 5 o'clock.

Q. How did you learn of it?

A. Mr. Warten had asked me to come to the store early that morning.

Q. When did he ask you?

A. Sunday evening, I think it was.

Q. Was Miller with him?

A. No, sir.

Q. Who was advising Warten?

A. Mr. McClellan, I think.

Q. He was also counsel for Miller?

176 A. I don't know that he was then; he was later.

Q. Don't you know that Mr. McClellan prepared the bill of sale?

A. No, sir.

Q. You say it was on Sunday evening that Warten told you to be at the store early?

A. Yes; he said to be there about five; that he wanted to see me before going off on the accom-odation.

Q. You had no intimation of this proposed sale until Monday morning?

A. No, sir.

Q. You heard nothing of it?

A. From no source, sir.

Q. When did he tell you he wanted you to be his assignee?

A. I believe Mr. McClelland mentioned that to me probably on Wednesday or Thursday of the week previous.

Q. He said that Warten was going to make an assignment and that he wanted you to be assignee?

A. Yes, sir.

Q. Did you consent to act as assignee?

A. Yes, sir.

Q. So that this general assignment was contemplated then?

A. Yes, sir.

Q. Do you know the amount of his indebtedness in that deed of assignment?

A. It was between $12,000 and $13,000.

Q. Did Mr. McClellan, when he asked you to be assignee of that general assignment, say anything to you about Warten making this bill of sale to Schoolfield, Hanauer & Company?

A. I don't remember.

Q. What did you say you valued the live stock at?

A. At between $2,500 and $2,600.

Q. Now, that stock of goods that you assisted in taking the invoice of and valuation upon—you valued the goods as well as the other clerks who were there, did you not?

177 A. Yes, sir.

Q. What was the basis of that valuation?

A. It was the market value of the goods at that time, as we considered it.

Q. Did Mr. Warten say anything to you about the valuation put on that stock of goods at that time?

A. Yes; he said he did not want to be fooled about the worth of the stock; that he did not want it any higher or any lower. He always gave me that instruction.

Q. After the invoice was taken did he look at it?

A. Yes.

Q. Did he say anything about it?

A. I don't know that he did.

Q. Did he make any remark in reference to the invoice to you or in your presence?

A. Yes; I heard him say to Mr. Markham that he had taken some things too high.

Q. Was that all?

A. I don't remember that; that was all he said.

Q. There was a conversation there in reference to the invoice and the invoice price of the goods?

A. Yes, sir.

Q. Did you know what he wanted that invoice for?

A. I did not.

Q. Was it your custom to take an invoice of goods in the month of January?

A. No, sir.

Mr. HUMES: I wish you would look at that paper I now hand you (handing witness the following):

ATHENS, ALA., *January 24th*, 1890.

178 SIR: As you have already been informed, Henry Warten made on January 13th, 1890, to me a general assignment for the benefit of his creditors.

I find his liabilities about fifteen thousand dollars due the several amounts hereto attached.

The Louisville Banking Company of Louisville, Ky., hold collaterals in excess, perhaps, of their debt, on which Bamberger, Bloom & Co., have run an attachment.

L. Bretzfelder & Co. claim that their debt has been paid by certain choses in action now in their possession. This claim, I think, is unfounded.

Outside of the collaterals and choses in action mentioned, Henry Warten's assets consist of accounts, notes, mortgages, judgments, and Decatur stock, aggregating the nominal sum of fifty thousand dollars due from his customers during the time he has been in business here. Some of them are good, many of them are bad, and most of them are worthless.

Of course, it is impossible to approximate what may be ultimately realized from them.

"here"

The creditors will please meet him or be represented here on February 3rd, 1890. In the meantime they will present their claims to me; otherwise give me notice.

JAMES F. McGAVOCK,
Assignee of Henry Warten.

Liabilities.

Bamberger, Bloom & Co., Louisville, Ky.	$6,358	53
Schwartz & Peck, Cincinnati, Ohio	142	25
Goldsmith, Klaw & Co., Cincinnati, Ohio	221	00
David Pratt Gin Co., Prattville, Ala.	540	45
179 Bailey Brothers, Winston, N. C.	29	00
Banner Brothers, New York	452	00
B. J. Wolf & Sons, New Orleans	431	95
J. B. Speed & B. Co., Louisville, Ky.	86	60
L. Bretzfelder & Co., Louisville, Ky.	986	17
J. B. Lillie, Franklin, Tenn.	185	00
Schaefer, Swartz & Co., St. Louis, Mo.	1,681	30
George Hacker, Cincinnati, Ohio	150	35
E. T. Jaffray & Co., New York	675	36
H. B. Claffin & Co., New York	371	27
Dunham, Buckley & Co., New York	429	02
Hood, Bonbright & Co., Philadelphia	418	06
Stern & Co., New York	84	00
Hirschberg Paper Co., Atlanta, Ga.	52	52

D. M. Ferry & Co., Detroit, Mich.	19 00
Louisville Banking Co., Louisville, Ky.	2,000 00
Monaghan Bay Co., Harrisburg, Pa.	159 60
	$15,455 43

Q. Did you write that? Was it issued under your authority?

A. Yes, sir.

Q. The insertion of the word "here" in somebody's handwriting. Whose handwriting is that?

A. Mr. Warten's.

Q. In this paper is the statement that most of these claims are worthless correct?

A. Yes, sir.

Q. This statement here, "L. Bretzfelder & Co. claim that their debt has been paid by certain choses in action now in their possession. This claim, I think, is unfounded." What do you mean by that?

A. They were transferred to them and not accepted until after the assignment was made.

Q. Certain claims had been transferred by Warten to L.
180 Bretzfelder and they were not accepted, and you claim that therefore they did not have the right to them?

A. Yes, sir.

Q. This Decatur stock, is it not a fact that it has been credited to the Louisville Banking Company?

A. It was left there as collateral for an indebtedness to that company.

Plaintiffs offer in evidence advertisement in Athens Courier of April 24th, 1890, as follows:

"It is astonishing the way white goods, dress goods, laces, and everything else in the ladies' notion line has sold at the store of Schoolfield, Hanauer & Co. within the past ten days. It has been a general rush, yet the bargains are not all gone. If you will take advantage of cost prices come at once or you most certainly will lose your chance. Goods sold strictly at first cost, and no difference to whom. One and all treated alike.

HENRY WARTEN, *Manager.*"

Re-examination by R. A. McClellan, Esq.:

Q. The property in that assignment was claims upon citizens of the county?

A. Yes, sir.

Q. Most all of them could not be made by law?

A. No, sir.

Q. What would have been their real value in the hands of a man that would work them up on any cash basis; would they not have been worth a great deal more than the cost value?

A. Yes, sir.

Q. They are still subsisting claims on citizens of that county?

A. Yes, sir.

181 Q. Was there or not almost a total failure of the cotton crop last year, 1889?

A. Yes, sir.

Q. A good many of Warten's old customers traded there at the house, did there not?

A. Yes; some of them; not all of them.

Q. Where was your office?

A. In that house.

Q. That was where Warten went to work?

A. Yes.

Q. Were or not his services indispensible?

A. Yes, sir.

Q. Who could or would besides him have made out a list of his liabilities?

A. I don't know that anybody would or could.

Q. In making that circular, did you or not consult him as to who he was indebted to?

A. Yes, sir.

Q. Did he buy goods for himself or for Schoolfield, Hanauer & Co.?

A. He bought them for Schoolfield, Hanauer & Co.

Q. I believe you stated that Mr. Walter Miller was the proprietor of the house at that time?

A. Yes.

Q. Henry Warten was merely a clerk in a subordinate position?

A. Yes, sir.

Q. In speaking of the market value of that stock of goods, do you mean their market value in a lump?

A. No; the market value of the goods bought and retailed out.

Q. I believe you stated that the word "here" on the circular was in Warten's handwriting?

A. Yes, sir.

Q. Is it not a fact that my young friend Tom Sanders, counsel for the plaintiffs in this cause, frequently consulted Mr. Warten about claims that were sold?

A. Yes, sir.

Q. Didn't everybody else around there have to go to Henry

182 Warten down to this day in reference to controversies on claims on *on* his estate?

A. Yes, sir.

Q. You were asked about the claim of L. Bretzfelder. Did you or not in reference to this act on the advice of an attorney?

A. Yes.

Q. Did or not you ask the attorney if you could be held liable on that claim?

A. I did, sir.

Q. Did you or not ask your attorney about it, and did he or not, after consideration, give you an opinion on it?

A. Yes, sir.

Q. Was or not that opinion sustained in the circuit court of Limestone county, Alabama?

A. It was, sir.

SATURDAY, *October 25th*, 1890.

Plaintiffs then introduced WALTER W. MILLER, who testified as follows:

Direct examination by DAVID POSTON, Esq.:

Q. What connection, if any, have you with Schoolfield, Hanauer & Company or the Schoolfield-Hanauer Company?

A. I am a clerk for Schoolfield, Hanauer & Company and a stockholder and one of the directors of the corporation, the Schoolfield-Hanauer Company.

Q. You are, then, in the employ of both?

A. Yes, sir.

Q. What, if anything, do you know about the dealings between Henry Warten and Schoolfield, Hanauer & Company? Was
183 he a customer of the house?

A. Yes, sir; for a long time.

Q. What do you know of the transactions between the Schoolfield-Hanauer Company and Schoolfield, Hanauer & Company here and Henry Warten by which Warten's business was owned by the corporation?

A. I just know that I was sent to Athens to take charge.

Q. When was that?

A. Father telegraphed me on the 13th of January. I went up there on the morning of the 14th.

Q. Who was in possession of the property?

A. My father, H. G. Miller.

Q. State to the jury how long you were there and what you had to do with the business.

A. I stayed there two days after the goods were attached by the United States marshal, and I then went to Memphis to fix up the bond and came back and replevied the goods, and then I was put in possession of the goods to wind up the business the best I could.

Q. What did you do about the business?

A. I opened the business and began selling goods and notified people who owed me of the accounts and notes that they were mine and that I wanted them to come forward and pay the debts.

Q. Were you left there as clerk or in what capacity?

A. I was boss and head clerk.

Q. Who gave directions in the concern?

A. I did; handled all the things; saw over everything.

184 Q. Did you collect considerable amounts of money there?

A. I collected money, sold goods, and handled the cash.

Q. What did you do with the cash?

A. Sent it to Memphis.

Q. Did you open any accounts there with the bank or otherwise?

A. Yes, with some of the merchants there. I kept a bank account there in the name of the Schoolfield-Hanauer Company.

Q. Who had charge of the money deposited there?

A. I did. No one else had any authority. I drew all the checks.

Q. Do you remember the indebtedness of Warten to *the* Schoolfield, Hanauer & Company when you went there, before the sale was made, and to the Schoolfield-Hanauer Company?

A. I did not know when I went there, but found out afterwards.

Q. What were the negotiations between him and your company, if you know?

A. Father bought him out, and he turned the things over to me.

Q. What did he pay Warten for them?

A. The Schoolfield-Hanauer Company paid for the stocks.

Q. What did Schoolfield, Hanauer & Company and the Schoolfield-Hanauer Company pay him for the property?

—. About $20,000.

Q. Was it the entire indebtedness he was owing them?

A. Yes, sir.

Q. Who were in your employ there?

Q. The first week I opened I had J. F. McGavock and Ed. Estes and a porter, and the next week I had Mr. Markham and John Tanner, and later on father employed Mr. Warten, in February.

185 Q. Why was he employed?

A. Because he was very valuable. I did not know any of the people that owed us, and he was indispensible to hunt them up and bring them in to us and help collect for us. That was about the only reason; he knew the whole trade.

Q. Didn't you have Mr. McGavock in there?

A. Yes; we had hired him and he began talking about he was going to leave and he was thinking about it, and I did not want to be left without anybody (before that I had depended entirely on McGavock), so I thought we had better hire Mr. Warten.

Q. Do you recollect how long it was after the goods were replevied and delivered to you that you hired Mr. Warten?

A. About three weeks, I think. It was some time in February, and the goods were replevied the latter part of January.

Q. Then from the time you took charge of the goods until he was employed by you, what connection had he with the business?

A. He had nothing to do with my business; he was working for the assignee, Mr. McGavock; he employed him to take a statement off the books. He kept the books in my office.

Q. Did you do any advertising for the firm while you were there?

A. Yes; several times. I put locals and cards in the paper; at least I called the newspaper man and told him to put them in.

Q. Look at that local (handing witness Athens Courier, April 24th, 1890, see page 71 (180) of this transcript), read it and say

186 what you know about it. When was the first time you ever saw that or one published at that time or about that time?

A. I never saw that before.

Q. Was that put in by your direction or authority?

A. No, sir.

Q. Did you ever hear of it before?

—. No, sir; I never saw that in the paper before.

Q. You never saw any notice to that effect?

A. No, sir.

Q. It was not put in there by your authority?

A. It might have been, but not in that wording. I told Mr. Warten to have it put in, but I did not give him any instructions about the wording. I told him just to put a local in the paper, advertising the goods.

Q. You never gave him any directions to put his name to it as manager?

A. No, sir; he was not manager.

Q. How long did you remain in Athens in charge of that business?

A. From January 14th till June 10th. I left about the 11th.

Q. You were there, then, during that time as the manager of the business—handling its assets, depositing the money and checking out the money, etc.?

A. Yes, sir.

Q. During that time did you buy goods there?

A. Yes, sir; we bought some dry goods and groceries, etc.

Q. How much groceries did you buy?

A. Between $300 and $400 dollars worth.

Q. How many dry goods?

A. Just a little over $1,200 worth of dry goods and boots and shoes and notions.

Q. Who made those purchases for you?

187 A. I made the purchases of the groceries and Warten bought the dry goods and notions, etc.

Q. How were those goods shipped—in whose name?

A. They were sent to the Schoolfield-Hanauer Company.

Q. Who paid for them?

A. I paid for them—the groceries and the dry goods. I carried the money home and turned it over to the house. I did not buy any goods there until my stock had broken down. I did not have any staples and nothing but remnants.

Q. Those goods came billed to you and were paid for by the Schoolfield-Hanauer Company?

A. Yes, sir.

Q. Where did Warten buy the goods?

A. At Louisville.

Q. W-ere did you buy the groceries?

A. In Memphis, at Schoolfield, Hanauer & Company's.

Q. How long did you say you remained there at Athens?

A. From January 14th to the 10th or 11th of June. I was through all my business on the 10th, but I stayed there another day. I don't remember whether I left on the 11th or 12th.

Q. How much did your sales amount to there?

A. My sales were about $6,000.

Q. What collections did you make?

A. About $800.

Q. What amount of stock did you have on hand when you left?

A. I had about $3,000 worth; I couldn't tell, because I did not invoice it, and I did not know much about dry goods.

Q. Your business is principally groceries?

A. Yes, sir.

Q. Who did you have in your employ when you left?

A. I had Mr. McGavock.

Q. What did you pay him?

A. $1,000 a year.

188 Q. Who else did you have?

A. I had Ed. Estes; I paid him $27.50 a month; and I had Mr. Warten; I paid him $100 a month.

Q. How much store rent did you pay?

A. $500 a year.

Q. What was your salary?

A. The firm pays me $1,800 a year.

Q. What disposition was made of that stock?

A. It was sold to Mrs. Mattie A. Warten.

Q. When?

A. On the 10th of June, 1890.

Q. How was the trade brought about?

A. Along in the latter part of May Mr. Warten came to me and told me his wife would like to buy out the remnants, if I would give her a good trade, and that he could probably raise $2,000 or $3,000, and that he wanted to hear a proposition. I told him I would write to the house, and I wrote to them that Mrs. Warten had about $2,000 or $3,000 that she would like to invest in the goods if she could get time. They wrote for me to bring Mr. Warten down there, and we went down and they came to an agreement.

Q. Who were the parties to that agreement?

A. Henry Warten, representing his wife, and Mr. W. W. Schoolfield and my father and myself. They consulted me as to the condition of the stock, etc.

Q. They came to an agreement and the sale was made; who made the sale?

A. I made it; I transferred the property and turned over the stock.

Q. What was that sale?

A. Mrs. Warten paid me $3,200 in cash, and the balance

189 in notes and accounts. She gave me her notes for about $4,300 or $4,400.

Q. Look at those papers I now hand you and say what they are, and say if they have any connection with the sale or transfer. What are those (handing witness three papers)?

A. Two of them are the papers I carried home with me—the bills of sale of the stock of goods at Athens and accounts and notes and real estate; they are the conveyances to Mrs. Warten by the Schoolfield-Hanauer Company and Schoolfield, Hanauer & Compa-y.

Q. Those were the papers that you delivered?

A. Yes, sir.

Claimants offer these three papers in evidence as follows:

"For and in consideration of the sum of three thousand five hundred fifty-eight and $\frac{94}{100}$ dollars ($3,558.94) to be paid as hereinafter recited, we, Schoolfield, Hanauer & Company, a mercantile firm of Memphis, Tennessee, do hereby sell and convey unto Mrs. Mattie A. Warten, wife of Henry Warten, of Athens, Alabama, acting as a free-trader under the laws of Alabama, by virtue of written consent of her husband, filed in the probate court of Limestone county, Alabama, the following-described personal property and choses in action, to wit, all of the goods, wares, and merchandise of every nature and description now belonging to the firm of
190 Schoolfield, Hanauer & Company and located in the storehouse formerly occupied by Henry Warten at Athens, Alabama, the same being the remainder of the stock of goods, wares, and merchandise sold and conveyed by said Henry Warten to Schoolfield, Hanauer & Company by bill of sale dated the 13th day of January, 1890.

"Also all the store fixtures, safe, and desk in the said storehouse at Athens, Alabama, and also the store fixtures, safe, and desk formerly owned and held by the said Warten in his store at Elkmont, Alabama.

"Also all of the uncollected notes, accounts, and other assets of the said Henry Warten so sold and conveyed by him on the 13th day of January, 1890, to the firm of Schoolfield, Hanauer & Company, it being the intention of this instrument, as so understood and agreed, that the said first parties hereto sell and convey by this instrument unto the said Mattie A. Warten the entire personal assets of every nature and description so sold on said date to them by Henry Warten, excepting such assets as may have heretofore been collected by them and such goods, wares, and merchandise as may have been sold by them since the date of said sale. The lot of mules, horses, and mares, forty-six in number, conveyed by said bill of sale, having been sold by the first parties hereto, are not included in this conveyance.

"It is distinctly understood and agreed that in the transfer of the notes, accounts, and other choses in action conveyed hereby
191 the same are transferred to the second party without recourse upon the first party or parties either in law or equity. The said first parties warrant that they have the right to sell the said property herein described, and that they will protect and warrant the title thereto against all persons claiming the same by, through, or under them, but not further or otherwise.

"For the consideration of this bill of sale the notes of second party, all bearing date the 10th day of June, 1890, due and payable as follows, to wit, one note for five hundred dollars ($500.00), due August 1st, 1890; one note for one hundred seventy-seven & $\frac{31}{100}$ — ($177.31), due September 1st, 1890; one note for five hundred dollars ($500.00), due October 1st, 1890; one note, due November 1st, 1890, for one thousand dollars ($1,000.00), and one note, due December 1st, 1890, for one thousand three hundred eighty-one & $\frac{63}{100}$

Q. What amount of stock did you have on hand when you left?

A. I had about $3,000 worth; I couldn't tell, because I did not invoice it, and I did not know much about dry goods.

Q. Your business is principally groceries?

A. Yes, sir.

Q. Who did you have in your employ when you left?

A. I had Mr. McGavock.

Q. What did you pay him?

A. $1,000 a year.

188 Q. Who else did you have?

A. I had Ed. Estes; I paid him $27.50 a month; and I had Mr. Warten; I paid him $100 a month.

Q. How much store rent did you pay?

A. $500 a year.

Q. What was your salary?

A. The firm pays me $1,800 a year.

Q. What disposition was made of that stock?

A. It was sold to Mrs. Mattie A. Warten.

Q. When?

A. On the 10th of June, 1890.

Q. How was the trade brought about?

A. Along in the latter part of May Mr. Warten came to me and told me his wife would like to buy out the remnants, if I would give her a good trade, and that he could probably raise $2,000 or $3,000, and that he wanted to hear a proposition. I told him I would write to the house, and I wrote to them that Mrs. Warten had about $2,000 or $3,000 that she would like to invest in the goods if she could get time. They wrote for me to bring Mr. Warten down there, and we went down and they came to an agreement.

Q. Who were the parties to that agreement?

A. Henry Warten, representing his wife, and Mr. W. W. Schoolfield and my father and myself. They consulted me as to the condition of the stock, etc.

Q. They came to an agreement and the sale was made; who made the sale?

A. I made it; I transferred the property and turned over the stock.

Q. What was that sale?

A. Mrs. Warten paid me $3,200 in cash, and the balance
189 in notes and accounts. She gave me her notes for about $4,300 or $4,400.

Q. Look at those papers I now hand you and say what they are, and say if they have any connection with the sale or transfer. What are those (handing witness three papers)?

A. Two of them are the papers I carried home with me—the bills of sale of the stock of goods at Athens and accounts and notes and real estate; they are the conveyances to Mrs. Warten by the Schoolfield-Hanauer Company and Schoolfield, Hanauer & Compa-y.

Q. Those were the papers that you delivered?

A. Yes, sir.

Claimants offer these three papers in evidence as follows:

"For and in consideration of the sum of three thousand five hundred fifty-eight and $\frac{94}{100}$ dollars ($3,558.94) to be paid as hereinafter recited, we, Schoolfield, Hanauer & Company, a mercantile firm of Memphis, Tennessee, do hereby sell and convey unto Mrs. Mattie A. Warten, wife of Henry Warten, of Athens, Alabama, acting as a free-trader under the laws of Alabama, by virtue of written consent of her husband, filed in the probate court of Limestone county, Alabama, the following-described personal property and choses in action, to wit, all of the goods, wares, and merchandise of every nature and description now belonging to the firm of
190 Schoolfield, Hanauer & Company and located in the storehouse formerly occupied by Henry Warten at Athens, Alabama, the same being the remainder of the stock of goods, wares, and merchandise sold and conveyed by said Henry Warten to Schoolfield, Hanauer & Company by bill of sale dated the 13th day of January, 1890.

"Also all the store fixtures, safe, and desk in the said storehouse at Athens, Alabama, and also the store fixtures, safe, and desk formerly owned and held by the said Warten in his store at Elkmont, Alabama.

"Also all of the uncollected notes, accounts, and other assets of the said Henry Warten so sold and conveyed by him on the 13th day of January, 1890, to the firm of Schoolfield, Hanauer & Company, it being the intention of this instrument, as so understood and agreed, that the said first parties hereto sell and convey by this instrument unto the said Mattie A. Warten the entire personal assets of every nature and description so sold on said date to them by Henry Warten, excepting such assets as may have heretofore been collected by them and such goods, wares, and merchandise as may have been sold by them since the date of said sale. The lot of mules, horses, and mares, forty-six in number, conveyed by said bill of sale, having been sold by the first parties hereto, are not included in this conveyance.

"It is distinctly understood and agreed that in the transfer of the notes, accounts, and other choses in action conveyed hereby
191 the same are transferred to the second party without recourse upon the first party or parties either in law or equity. The said first parties warrant that they have the right to sell the said property herein described, and that they will protect and warrant the title thereto against all persons claiming the same by, through, or under them, but not further or otherwise.

"For the consideration of this bill of sale the notes of second party, all bearing date the 10th day of June, 1890, due and payable as follows, to wit, one note for five hundred dollars ($500.00), due August 1st, 1890; one note for one hundred seventy-seven & $\frac{31}{100}$ — ($177.31), due September 1st, 1890; one note for five hundred dollars ($500.00), due October 1st, 1890; one note, due November 1st, 1890, for one thousand dollars ($1,000.00), and one note, due December 1st, 1890, for one thousand three hundred eighty-one & $\frac{63}{100}$

dollars ($1,381.63), are executed and delivered cotemporaneously with the execution of this paper.

"As a further consideration of this bill of sale and conveyance, the said Mattie A. Warten assumes and agrees to pay the liability now due from Schoolfield, Hanauer & Company to James F. McGavock and the amount to become due for one year's service as clerk, beginning January 14th, 1890, and also the rent notes of Schoolfield, Hanauer & Company for rent of the storehouse herein described in Athens, Alabama, falling due July 1st, 1890, and January 1st, 1891, for two hundred and fifty dollars each ($250.00).

192 "And the said Mattie A. Warten, fully understanding the above contract, expressly assents thereto, evidenced by her joining in this conveyance.

"Signed in duplicate. Athens, Ala., June 10th, 1890.

"(Signed) SCHOOLFIELD, HANAUER & CO.
"MATTIE A. WARTEN.

"Witness:
"THOS. J. TURRENTINE.

"2.

"For and in consideration of the sum of seven hundred and fifty dollars ($750.00) to us in hand paid and the further consideration hereinafter recited the Schoolfield-Hanauer Company, a mercantile corporation of the city of Memphis, county of Shelby, and State of Tennessee, do hereby sell and convey unto Mrs. Mattie A. Warten, wife of Henry Warten, Esq., of Limestone county, Alabama, as a free-trader under the laws of Alabama, by virtue of written consent of her husband, filed in the probate court of Limestone county, Alabama, the following-described personal property and choses in action, to wit, the remainder of the notes, accounts, and choses in action that were sold by Henry Warten to the said The Schoolfield-Hanauer Company on the 13th day of January, 1890, by paper executed, this transfer and conveyance being intended to convey to said Mattie A. Warten aforesaid all of said claims and accounts that have not been collected by the Schoolfield-Hanauer Company. For

193 the balance of the consideration said Mattie A. Warten this day executed her two promissory notes for the sum of five hundred dollars ($500.00), one due July 1st, 1890, and the other for three hundred twenty-two and $\frac{69}{100}$ dollars (322.69), due September 1st, 1890, the said The Schoolfield-Hanauer Company releasing all the rights and title held by them in and to said claims so transferred, without any recourse upon them in law or in equity, expressly refusing to make any covenants whatever, and only releasing and conveying such claims and titles as they possess.

"And the said Mattie A. Warten, fully understanding the above

contract, expressly assents thereto, evidenced by her joining in this conveyance.

"Signed in duplicate. Athens, Ala., June 10th, 1890.

"THE SCHOOLFIELD-HANAUER COMPANY,

"Per W. W. SCHOOLFIELD, *Pres. & Treas.*

"MATTIE A. WARTEN.

"Witness:

"THOS. J. TURRENTINE.

"3.

"For and in consideration of $1,227.43, twelve hundred twenty-seven dollars and forty-three cents, we have this day sold, bargained, and conveyed to Mrs. Henry A. Warten, wife of Henry Warten, following accounts, without recourse in law or equity:

"J. R. Hoffman, $8.90; Morgan F. McGavock, $37.16; D. T. Phillips, $7.10; James E. Horton, $20; J. W. Williams & Hand, $320.31; Gabe Mason, $60.32; Henry Williams, $49.15; Mrs. Marie Frederecks, $24.09; Moses Harris, $47.75; C. L. Sherrill, $24.33; Lon Harris, $19.00; N. C. Easter, $54.04; Limestone county,
194 $55.50; R. B. Mason, $1.40; Birmingham Mercantile Company, $91.85; Decatur Mercantile Company, $117.91; N. F. Westmoreland, $1.37; Norreman & Burkey, $5.75; Hill & Legg, $728.88; J. W. Hill, $18.65; Jack McWilliams, $3.25; W. N. Reed, $3.55; Mrs. Ossie Rutland, $7.51; T. K. Hewlett, $4.80; Mrs. Lula Donevent, $.50; S. M. Clay, $.53; Sam. Roseman, $3.75; James Sandifer, $1.00; Oscar Newby, $.75; Austin Cain, $.50; P. Peacher, $7.15; J. H. Raney, $1.00; A. D. Anderson, $4.35; F. H. Ogelsby, $3.50; Ira Davenport, $2.70; Chas. R. Getty, $1.50; W. R. Sykes, $6.40; W. J. Irvin, $.17; W. B. Vaughn, $3.30; total, $1,729.83.

"Athens, Ala., June 10th, 1890."

Q. Who drew up those papers?

A. Messrs. Poston & Poston drew up the two first ones.

Q. Who are they?

A. They are our attorneys at Memphis.

Q. Who drew up the other one?

A. Mr. McClellan, our attorney at Athens.

Q. There was some land in addition to that property?

A. Yes.

Q. What disposition was made of that?

A. I sold it to Mrs. Warten and delivered the deed at the same time.

Q. How was that transaction?

A. She agreed to pay $1,200 for the land; that was paid in cash.

Q. How was the stock of the Schoolfield-Hanauer Company paid for?

A. They did not have any stock; only had notes. I sold them for $750 cash, and the balance in notes.

Q. Then the Schoolfield-Hanauer Company property—how was that sold?

A. Part of that—the stock of goods and a few notes—I sold
195 for $3,500 in notes.

Q. What was there of those assets?

A. I took the stock at about $3,000, and I had some notes, amounting to about $1,700.

Q. What notes were they?

A. Notes on Charles R. Getty and J. H. Hill.

Q. Was that Hill note for mules?

A. Yes, sir.

Q. What other claims were paid?

A. I had claims of open accounts that I had sold to merchants and other parties. I got about $1,250 cash for them. I had sold to Hill & Legg and the Decatur Merchantile Company and the Bermingham Mercantile Company. They are all on this list (No. 3, see page 82 (193) of this transcript).

Q. In other words, you conveyed to Mrs. Warten the lots and the assets of the corporation and the stock of goods and other property of the firm and your current business?

A. Yes, sir.

Q. And she paid you about how much cash?

A. About $3,200.

Q. How did you get at that?

A. $750 of that was for the corporation, the Schoolfield-Hanauer Company, and $1,250 real estate, and about $1,200 open accounts.

Q. She paid you about $3,200 cash and gave you notes for $3,500 and $800?

A. Yes, sir.

Q. Are the terms of the sale correctly set forth in these papers?

A. Yes, sir.

Q. You took the money and went home?

A. Yes, sir.

Q. Do you know a man named C. E. Frost at Athens?

196 A. I think there is a man named that in the bank there—cashier; there were two men there named Frost.

Cross-examined by MILTON HIMES, Esq.:

Q. I understood you to say you were the son of H. G. Miller?

A. Yes, sir.

Q. And also one of the stockholders of the Schoolfield-Hanauer Company?

A. Yes, sir.

Q. You were sent to Athens a day or two after the transfer of this stock of goods from Warten to Schoolfield, Hanauer & Company?

A. Yes, sir; I went there on the 14th day of January.

Q. You took charge of the stock of goods?

A. I did not right then; my father was in charge then.

Q. Your father left, and left you in charge?

A. Yes, sir.

Q. And you remained there till the sale to Mrs. Warten?

A. Yes.

Q. You employed Mr. McGavock for 12 months at $1,000?
A. Yes.
Q. Your firm is not engaged in the retail business, is it?
A. Not in Memphis.
Q. But in the wholesale grocery business?
A. Yes, sir.
Q. You rented that house for a year?
A. Yes, sir.
Q. Did you sell goods to people in the country?
A. Yes, sir.
Q. On what credit?
A. 30 and 60 days.
Q. Not longer than that?
A. I sold to Mr. McGavock's brother. Mr. McGavock stood for him.
197 Q. What credit was that?.
A. It was to be paid in the fall.
Q. You also replenished the stock of goods by purchasing dry goods, etc.?
A. Yes, sir.
Q. Warten purchased the dry goods and the other goods, with the exception of the groceries, in Louisville?
A. Yes, sir.
Q. He went there and made the purchases?
A. Yes, sir; except the coal oil and groceries.
Q. Where are the books of account you kept there?
A. I turned them over to the house.
Q. Who kept them?
A. I kept some and Warten kept some.
Q. Can you not get those books here?
A. Yes, sir.
Q. You say part of them Warten kept and part you kept; in whose handwriting is most of it?
A. Most of it is in my handwriting.
Q. What books did you have?
A. I just kept a book showing what I took in and what I took it in for and the collections and sales.
Q. You had an account book showing what debts were due you; did you not?
A. Yes, sir.
Q. How much did you purchase for replenishing the stock while you were there?
A. About $1,600 *dollars* worth.
Q. How much of that was for dry goods and notions and how much was for groceries?
A. I don't remember exactly. I know the dry goods and notions and boots and shoes were a little over $1,200.
Q. Then the grocery account was the difference between that and the whole amount, which was about $1,600?
A. Yes, sir.

198 Q. Who did you buy these goods from in Louisville?

A. The dry goods from J. M. Robinson & Co. and the notions from Hess, Henle & Company and the boots and shoes from—I don't remember the name of the firm.

Q. Hess, Henle & Company were also creditors of Henry Warten's?

A. I understood that they were.

Q. In what sort of business were they engaged?

A. They were in the notion business, I suppose.

Q. You purchased your notions from Hess, Henle & Company?

A. Yes, sir.

Q. Did you direct Warten as to who he should purchase the notions from?

A. No, sir.

Q. Then he did that of his own accord?

A. Yes.

Q. Were the parties he bought the dry goods from creditors of his?

A. I don't think they were.

Q. Bamberger, Bloom & Company were dry-goods men in Louisville, were they not?

A. Yes, sir.

Q. They were the parties he had purchased from before, were they not?

A. I suppose so.

Q. This stock of goods that were purchased for Warten—was it purchased by Schoolfield, Hanaur & Company or by the Schoolfield-Hanauer Company and Schoolfield, Hanauer & Company?

A. It was purchased by Schoolfield, Hanauer & Company.

Q. How much was Warten owing Schoolfield, Hanauer & Company?

A. About $17,000.

Q. Was he owing the corporation anything?

A. Yes.

Q. How much?

A. About $3,882.

Q. Did he pay that?

A. Yes.

199 Q. How did he pay it?

A. With notes and accounts and mortgages.

Q. Have you got a list of those?

A. Yes, sir.

Q. Did you have any other clerks in your employ whilst you were there except McGavock and Warten?

A. Yes; I had Mr. J. D. Markham and Ed. Estes and John Tanner, and then I had a boy there, the sheriff's son—I forgot his name—and then I had one or two different porters.

Q. Is it not a fact that all of these gentlemen had been clerking for Warten?

A. All except John Tanner, I think.

Q. You just retained the clerks?

A. I hired Mr. Markham.

Q. They were there in the employ of Warten up to the time he sold out to Schoolfield, Hanauer & Company?

A. I don't know.

Q. You say you were to pay Warten $100 a month?

A. Yes; that is what my father said he was going to pay him.

Q. Did you ever pay him anything?

A. Whenever he wanted any money he came to me and I gave it to him.

Q. Did you hire him by the year?

A. I don't know how my father hired him. I don't know the arrangement between them.

Q. You say you don't know the arrangement between Warten and your father, but Warten did draw money right along as he wanted it. What do you mean by saying you do not know the arrangement between Warten and your father?

A. I mean I did not know how long he had hired him for.

200 Q. How did you find out McGavock was hired by the year?

A. He would not hire any other way.

Q. And so you hired him for 12 months?

A. My father did.

Q. How much have you paid Warten?

A. I don't know; I paid him up pretty near in full.

Q. Have you settled with him since for the balance you owed him?

A. I settled with him when I went to Memphis and paid him.

Q. Did you take his receipt?

A. I did not; it was taken in our office upstairs, I reckon.

Q. Did you see it taken?

A. No, sir.

Q. Did you pay him any money in Memphis?

A. Yes, sir.

Q. About how much?

A. I don't know.

Q. Was it as much as $100?

A. I don't know.

Q. And you have no idea how much money you paid him then?

A. No.

Q. Was it as much as $200?

A. I don't suppose it was much as $200; no; I suppose it was more than that.

Q. About how much?

A. I have no idea; I could not say exactly.

Q. But money was paid?

A. Yes; right along. He was paid up in full what was coming to him.

Q. Did Mr. Burke pay him?

A. No; he don't handle the cash in our house.

Q. Who did?

A. Mr. Coxe would take receipts and pay out money.

Q. Is he in the employ of the Schoolfield-Hanauer Company now?

A. Yes, sir.

Q. If the money was paid Mr. Coxe would pay it and take his receipt?

A. Yes, sir.

201 Q. Mr. Burke is book-keeper, is he not?

A. Yes, sir.

Q. And any payment of money that was paid to Warten would appear on the books?

A. I don't know; I suppose so; I did not keep the books.

Q. When was this sale made to Mrs. Warten?

A. June 10th.

Q. Up to that time Warten was there and actively engaged in the business in connection with yourself and those under yourself in your employ?

A. Yes; he was there.

Q. Did Mrs. Warten come to see you to make this trade with you? Who made the proposition for the trade, Mrs. Warten or yourself?

A. Mr. Warten came to me, representing his wife, and said she would like to buy the business out.

Q. Was she engaged in any business then?

A. No; not that I know of.

Q. Did you ever hear of her being engaged in any business?

A. No, sir.

Q. Did she have any property that you know of?

A. No, sir.

Q. Did she have the reputation of having any means there?

A. Not that I know of.

Q. And you made the trade with Warten, he acting for his wife?

A. Yes, sir.

Q. And you sold to him for her the entire stock of goods and all of the accounts that had been transferred to the firm and corporation?

A. Yes, sir.

Q. And the house and lot at Elkmont and the house and lot at Elkmont Springs, Tennessee?

202 A. Yes, sir.

Q. And everything that they had gotten from Warten except the goods that had been sold and the mules and the accounts that had been collected?

A. Everything I had left I sold to his wife.

Q. She paid you the cash for that land, did she?

A. Yes, sir.

Q. Do you know where she got the money?

A. No, sir.

Q. How was the money paid?

A. I think some was New York exchange and the rest was currency.

Q. How much was in New York exchange?

A. I don't know; two or three thousand dollars. I don't know whether it was two or three.

Q. Where was the bill of exchange drawn—at what bank?

A. I don't know.

Q. Where did you get that bill of exchange?

A. She gave it to me at my office in the store at Athens.

Q. To whose order was the exchange payable?

A. To Mrs. Mattie Warten, I think. I don't know whether it was payable to her or to Schoolfield, Hanauer & Company. It was signed by the cashier of some Louisville bank on a New York bank.

Q. What bank in Louisville was it?

A. I don't know.

Q. Did not Hess, Hinle & Co. have something to do with that?

A. I don't know.

Q. Did you not understand that they did?

A. No, sir.

Q. And you say you took the exchange without remembering the name?

A. Yes, sir.

Q. And you do not know the amount?

A. No, sir.

203 Q. What was the amount to be paid?

A. About $3,200.

Q. Was the bill of exchange payable to Mrs. Warten and endorsed by her?

A. I don't know. I think it was payable to her.

Q. You sold those goods partly for cash and partly on credit?

A. Yes, sir.

Q. Did you take any security for the credit?

A. Nothing more than her note.

Q. You let the cash be applied to the payment in full of the land, retained no lien on the land, and sold the stock on credit?

A. Yes, sir.

Q. Did you take an invoice of the stock of goods you had on hand before you sold?

A. No, sir.

Q. No invoice was taken?

A. No, sir.

Q. What did these claims that were transferred to the Schoolfield-Hanauer Company amount to in the aggregate?

A. About $3,800, I think.

Q. Was the Schoolfield-Hanauger Company interested in that stock of goods?

A. No, sir.

Q. You said, did you not, that Mr. Burke was the book-keeper for both the firm and the corporation?

A. Yes, sir.

Q. According to your understanding of the transaction between the firm and the corporation and Warten, the corporation had no

interest in the stock of goods and the firm had none in the accounts?

A. Not in those transferred to the corporation; they had some of their own.

Q. In whose handwriting is that paper—the bill of sale of the claims to the corporation?

A. I- looks like Warten's handwriting.

Q. Who is Carey Gilbert, who appears to be the subscribing witness to this paper?

204

A. I don't know.

Q. You say this is in Warten's handwriting?

A. I said it looked like his handwriting.

Q. Do you know where this paper was in fact signed?

A. No, sir.

Q. This paper that was offered here in evidence, showing the sale to Mrs. Warten, says that she is a free-trader under the laws of Alabama. When was she made a free-trader?

A. She was made so just a few days before that.

Q. With the view of purchasing this stock of goods?

A. Yes.

Q. I understood you to say you went to Athens on January 14th—the day after the sale to Schoolfield, Hanauer & Company?

A. Yes.

Q. And the goods were attached on the 16th by the U. S. marshal?

A. Yes, sir.

Q. How long did they remain in possession of the U. S. marshal?

A. Four or five days, I think.

Q. Until the early part of the next week?

A. I think so.

Q. Then you assumed possession of them after they were replevied?

A. Yes, sir.

Q. That was about the 20th or 21st?

A. Yes, sir.

Q. How long after you took possession of it again was it that Warten went in there as clerk?

A. About three weeks, I think; some time in February.

Q. During that time he was there in that store constantly?

A. Yes; a good deal of his time.

Q. Did he not make his headquarters there?

A. I suppose you would call it that. He was working for the assignee.

Q. Do you know what the assignee paid him?

205

A. No, sir.

Q. Did you make a contract with Warten to employ him?

A. No.

Q. Who did?

A. Father.

Q. Was he there then?

A. He left right after he replevied the goods and came back in February.

Q. Did you pay Warten what was paid him?

A. A good deal; not all, I think.

Q. Who else paid him anything?

A. I don't know whether father did, or the cashier. I might have paid it all. I don't recollect.

Q. I understood you to say that he would just draw out as he wanted it.

A. I said he drew all the time what he wanted.

Q. How did he draw it out?

A. In $5 and $10 *dollars*, and his wife had an account there and bought goods.

Q. Did he go to the cash drawer and draw it out?

A. No, sir; he came to me.

Q. And you would charge him with it on the books?

A. Yes, sir.

Q. He did not get any amounts except from you?

A. No, sir.

Q. And he remained there in that way until you sold out to M-s. Warten?

A. Yes, sir.

Q. In reference to this advertisement in the newspaper, signed "Henry Warten, manager," you say that was done without your authority?

A. Yes, sir; the "manager" part was. I never saw but one of our advertisements, and that was on a race ticket.

Q. Did you pay for the advertisement?

A. Yes, sir.

206 Q. You did not notice whether it had been put in the paper or not?

A. No, sir.

Q. Diden't you look to see whether it was stated correctly as you had stated it?

A. No, sir. The paper only came out once a week, and I very seldom looked at it. I did not word the thing, anyhow.

Q. How much was it you sold this property to Mrs. Warten for?

A. I got about $3,200 in cash and about $4,300 in notes; something over $3,200 and something over $4,300, making about $7,600 in all.

Q. You sold the real estate at Elkmont at how much?

A. I sold the storehouse at Elkmont for $500 and the Elkmont Springs property for $250.

Q. What other real estate did you sell?

A. I sold a piece about a mile from Ensley city for $500.

Q. Now, the stock of goods and the assets of that house there, what did you sell that at?

A. That was about $3,000; it might have been more or less.

Q. Now, the debts due the house, what did you sell them for?

A. About $1,700 and the mortgages and notes.

Q. The balance of those claims that were transferred to the corporation?

A. I sold them to her for $750 cash and about $800 credit, little over $1,500.

Q. Is that all you sold her?

A. I sold her my accounts with different firms in Athens and other old accounts I had for about $1,200. I sold Schoolfield,
207 Hanauer and Company's accounts; $1,700 worth.

Q. What was it you sold for about $1,200?

A. A little over $1,700 worth of accounts. They were debts I had made myself.

Q. Now, the corporation claims——

A. I got $750 cash and a little over $800 in notes for them.

Q. How was the corporation secured?

A. They were just open notes.

Q. There was no security?

A. No security.

Q. The stock of goods—how much of that was cash?

A. I sold that for about $3,500 in notes. I did not get any cash. I sold the stock of goods and $1,700 in notes. There was another $1,700 worth of accounts that I sold. That was a mortgage of about $1,400 and a note about $300.

Q. The real estate at Elkmont you sold for $500 cash?

A. Yes.

Q. And the real estate at Elkmont Springs sold for $250 cash?

A. Yes, sir.

Q. And the Birmingham property for $500 cash?

A. Yes, sir.

Q. Now, the stock of goods and $1,700 worth of mortgages and notes you sold for a little over $3,500 in notes?

A. The firm claims I sold for about $1,750 and got $1,200 or a little over cash.

Q. Who did you sell them to?

A. Different merchants in Athens and Decatur. Mrs. Warten gave me a little over $1,200.

Q. Did she give you a note for that?

A. No; she gave me cash.

208 Q. How many of these claims were there of the firm's?

A. Only two that I transferred of the original. I transferred one mortgage to her and one note—one or two notes.

Q. Who was the mortgage by?

A. Chas. R. Getty.

Q. Who was the note on?

A. I transferred J. W. Hill's note for $330.

Q. How much was the Getty matter?

A. A little over $1,400.

Q. You turned that over to her?

A. Yes, sir.

Q. What else?

A. I transferred all notes and open accounts. The other is matters I sold myself while I had charge of the business.

Q. What notes and mortgages of the firm's were transferred?

A. That note and mortgage and two other little notes were transferred. The Getty mortgage was the only note that was transferred to the firm. The Hill note was what I transferred. I took his note for mules I sold him.

Q. That Getty note for $1,400 you considered good for the amount of it?

A. Yes, sir.

Q. And the note of Hill for the mules?

A. That was considered good, too.

Q. Had it matured?

A. No, sir.

Q. This mortgage of $1,400—is that a part of the $3,500 that you estimated the stock of goods at?

A. No.

Q. What did you get for the stock of goods and the Getty notes and the John W. Hill note?

A. About $3,500.

Q. Mr. Miller, I want to understand you. The stock of goods you had when you sold to Mrs. Warten and the debts and the
209 house (about $1,700 worth) and then this Getty note of $1,400 and the Hill note of $330, you estimated all of them at $3,500.

A. No; I did not. I took those separately. The stock of goods I estimated at about $3,000 and the Getty note and the J. W. Hill note about $1,700. For these I took her notes for about $3,500; for the other $1,700 of accounts that I contracted myself I got a little over $1,200 in cash.

Q. Were there not some notes besides the Getty note and the J. W. Hill note?

—. Yes, sir; there were two, but they were collected.

Q. This stock of goods you valued at $3,000?

A. That was my valuation.

Q. The debts due the house, the Getty mortgage, and the Hill note for $330, taken with the stock of goods, you took her notes for $3,500 for them?

A. Yes, sir.

Q. I just want to understand you exactly. Now, this stock of goods, you valued that at $3,000 and the debts due the house at $1,700. You took her notes at $3,500. You got no cash at all on that transaction?

A. No, sir.

Q. The corporation claims—you got about $1,600 for them?

A. I got $750 cash and a little over $800 in notes.

Q. The accounts of the house were $1,700; you got $1,200 for that?

A. Yes; a little over $1,200.

Q. What were those accounts?

A. Accounts I made myself on different houses.

Q. You sold goods out of the house to those people, and in the sale

to Mrs. Warten you sold that $1,700 worth of claims to her
210 for $1,200 in cash. Is it not a fact that that $1,700 was good?
A. It might have been good.
Q. You would not have sold goods to anybody except people who where good?
A. I thought they were good and understood that they were.
Q. When were the debts due?
A. Some in 15 days and some in 30 days, and some were not due until November; some were falling due every day.
Q. Do you know the name of the mercantile firms you sold those goods to?
A. The Decatur Mercantile Company and the Birmingham Mercantile Company.
Q. Do you know any of the parties in those concerns?
A. Yes.
Q. Who were they?
A. Nat. Malone came up and bought the goods.
Q. Is he not a brother of Mrs. Warten?
A. Yes; I think so.
Q. And you sold him a part of the goods, and his account you sold her for less than the amount of it?
A. I don't know.
Q. Is it not a fact that that concern in Birmingham is a jobbing house and not a retail establishment?
A. I don't know. I just sold them to him because he came up and looked at the goods.
Q. Did you invite him to come?
A. No, sir.
Q. Was not Henry Warten down in Birmingham a short time before Malone's visit?
A. I don't know.
Q. Did he not leave Athens, stating he was going to Birmingham?
A. He did not tell me.
Q. Was there not a man by the name of Malone connected with the Decatur Mercantile Company?
211 A. I don't know. I think he had an interest in it.
Q. He is also a kinsman of Mrs. Warten's?
A. I reckon so.
Q. Do you remember the amount of the accounts of the Decatur and Birmingham Mercantile Company with that house?
A. I do not.
Q. Could you approximate it at all?
A. No. It was not very much, I don't think.
Q. Do you know how they happened to come to Athens to buy goods?
A. No, sir.
Q. Is Athens a place where they sell goods at wholesale?
A. I sold them any way.
Q. Did you sell to any other mercantile firms in Decatur and Birmingham except these two?

A. No, sir.
Q. Did you sell to any other business firms in any other place except these two?
A. I sold to other business houses in Athens.
Q. I am speaking of other points.
A. No; I did not sell any others.
Q. Did you understand that it was the current of trade and business for merchants in Birmingham and Decatur to purchase at Athens?
A. I did not.

Re-examined by DAVID POSTON, Esq.:

Q. The trade was made as evidenced by these papers; they correctly state the consideration and how it was paid?
A. Yes, sir.
Q. You estimated this stock there at $3,000. Do you know anything about merchandise?
212 A. No, sir.
Q. You say Mr. Warten came and got money whenever he wanted it. What do you mean? Do you mean on his wages?
A. Yes, sir.
Q. You do not mean he came and took what he wanted?
A. No, sir.
Q. Did Mr. Malone have a sister in Athens at the time he came there on a visit?
A. Mrs. Warten is his sister, I think.
Q. He did not live there, did he?
A. No, sir.

MONDAY, *October 27th*, 1890.

Claimants then introduced ROBERT RAWLS, who testified as follows:

Direct examination by R. A. MCCLELLAN, Esq.:

Q. Where do you live?
A. At Athens, Alabama.
Q. How long have you been there?
A. Since January, 1883.
Q. What has been your business from that time to this?
A. I have been editor and publisher of a newspaper—the Alabama Courier.
Q. Is there any other paper in that county now?
A. Not now.
Q. Have you a copy of that paper with you, having a local in it with reference to Schoolfield, Hanauer & Co.?
A. Yes, sir.
Q. Produce it.

(Witness produces paper of April 24th, 1890, and reads local, as copied on page 71 (180) of this transcript.)

Q. Who is the author of that editorial?

A. I wrote the local.

213 Q. How came you to do it?

A. I was ordered to write it as a paid local.

Q. Who told you to put it in?

A. I think Mr. Warten did. I am not positive; either him or Mr. McGavock.

Q. Did you put "Henry Warten, manager," by his authority or Mr. Miller's?

A. No, sir.

Q. Was anything said to you after that was put in there about the word "manager" at the end of it?

A. Mr. Warten came to my office the morning after the paper was out. It was out in the afternoon. Next morning he came to my office and says, "In the local you have in your paper in reference to Schoolfield, Hanauer & Company's business you have put my name in the position of manager, when that is not true. I am not manager. Please lift that out and insert Walter Miller. I am only clerk in the employ of the store." He said, "You give me undue credit."

Q. Did it disappear then?

A. The line was lifted out, but not in the next issue. It was in the first issue, and I told the boy to lift it out, but when the next issue was about half through the press I saw the line had not been lifted out.

Q. It only appeared with one issue of the paper and half the next?

A. I think the local went in four times—once with that in and in part of the next issue.

Q. You directed it to be taken out before the second issue was commenced?

A. Yes, sir.

Q. The subordinate did not take it out?

214 A. No, sir; not when I ordered him to. He said he forgot it.

Q. How did you happen to put down there "manager"?

A. I had been in the habit of writing his name to advertisements so often and I thought he had been in the business so long that it was complimentary to him.

Q. You were not authorized by either Warten or Walter Miller to put down Warten as manager?

A. No, sir.

Cross-examination by MILTON HUMES, Esq:

Q. You wrote this local yourself?

A. Yes, sir.

Q. At whose instance?

A. I could not say. I think it was Mr. Warten or McGavock. I had spoken to Mr. Miller there in the store, and he said the boys in the store would give me *any* (an) advertisement.

Q. Do you think it was Warten or McGavock?

A. I think it was Warten.
Q. Did you write it in the office of the store?
A. No, sir; I went to my office and wrote it. I had a typewriter and wrote it on that.
Q. And you put the name of Henry Warten, manager?
A. Yes, sir.
Q. And after it was issued the next day Warten said it was not correct?
A. Yes, sir; the next morning early he came and told me it was incorrect and that he was not manager but was a clerk.
Q. How long have you been living in Athens?
A. I have been living there since 1883.
Q. And you were constantly going round looking up the locals of the town?
215 A. Yes; I had no one else to do it.
Q. I understood you to say that you supposed he was the general manager?
A. No; I did not say that; I said I had been in the habit of writing his name to advertisements.
Q. But not as manager?
A. No, sir.

216 Claimants then introduced HENRY WARTEN, who testified as follows:

Direct examination by R. A. MCCLELLAN, Esq.:

Q. What is your age?
A. I am 36 years old.
Q. Do you live in Athens?
A. Yes, sir.
Q. How long have you lived there?
A. Been there about 17 years now.
Q. What business did you go into when you first went there?
A. I was clerking for Rosenau Brothers. I stayed there from 1873 to 1881.
Q. While you were a clerk in the hous- mentioned did you do any other business in any other trade?

Plaintiffs object to this question as immaterial. Objection overruled by the court. To this ruling the plaintiffs except.

A. Yes, sir; they allowed me to carry on a business of my own.
Q. What business did you go into in 1881?
A. Grocery business.
Q. How long were you in that business exclusively?
A. One year groceries exclusively.
Q. What was the size of your grocery business?
A. Between $7,000 and $8,000.
Q. The claimants S-hoolfield, Hanauer & Company—at what place have they been doing business?
A. At Memphis.
Q. What kind of business?

A. General commission, grocery, and cotton business.

217 Q. How long have they been in that business, if you know?

A. I don't know; a good many years.

Q. If you know, state the extent of their business, whether it is large or small.

A. They do a very large business, both groceries and cotton.

Q. What is the population of Athens?

A. I suppose about 1,000 or 1,200 people.

Q. Are these claimants among the prominent business houses of Memphis?

A. Yes, sir.

Q. When did the firm of Schoolfield, Hanauer and Company go out of business, except for the purpose of winding up?

A. Last year in the spring; I think about April 1st.

Q. Did some or all of the members of the firm go into the corporation?

A. Yes, sir.

Q. What was the corporation called?

A. The Schoolfield-Hanauer Company.

Q. Did you have any dealings with the firm of Schoolfield, Hanauer and Company?

A. Yes, sir.

Q. When did they commence?

A. In the fall of 1881.

Q. To what extent were those dealings?

A. From $15,000 to $25,000 worth of goods I bought from them a year. The first year, 1881–'82, I bought more goods from them than usual, because I was exclusively in the grocery business. I suppose it amounted to nearly $30,000 that year.

218 Q. When they went out of business last year were you indebted to them in any sum?

A. Yes, sir.

Q. In what amount?

A. I owed the firm $17,032.40.

Q. What was that for?

A. It was for the balance up to that time and also for merchandise; a running account for that year previous up to the time we made settlements.

Q. What time did you make a settlement?

A. I do not recollect exactly. I think it was in the latter part of April or May.

Q. Were you furnished with statesments of your account with these claimants all the way through?

A. Yes, sir; all the time.

Q. Are those the statements of your indebtedness to them rendered by them to you?

A. Yes, sir. (Witness identifies statements offered in evidence in connection with Burke's evidence. See page 54 (79), &c.)

Q. Are the items on those statements correct?

A. Yes, sir.

Q. Did you get from them the goods at the time and in the amounts specified in these statements?

A. Yes, sir.

Q. Were the prices fair, reasonable, and just?

A. Yes, sir.

Q. Are there any credits on them?

A. Yes, sir.

Q. Did you get credits for all that you were entitled to against them?

A. Yes, sir.

Q. What did they consist of?

219 A. Money and cotton.

Q. When you made your settlements did you give any notes or pay any money?

A. Yes; I had taken in my old notes the year previous and given new ones.

Q. Have you the notes before you?

A. Yes.

Q. Read them.

A. This settlement is based on four notes. These three notes dated May 22nd, 1889, represent the settlement here on this statement. This note of $2,500, of June 10th, was discounted for me. (Witness reads the four notes of Henry Warten to Schoolfield, Hanauer & Company as copied on page 41 (146) of this transcript.)

Q. That note for $2,500, I believe, was given to the corporation?

A. No; it was given to the company; it was discounted for me. They placed the proceeds to my credit, and I drew on them by bills abroad.

Q. What do you mean by "bills abroad"?

A. I discounted my clothing bills that I bought abroad.

Q. Were or not these claimants—the firm—your bankers substantially?

A. Yes, sir; I carried on my banking business principally with the house.

Q. When you were indebted to other people you would draw on them?

A. Yes, sir.

Q. They would pay to other people for you and put that down on your account?

A. Yes, sir.

220 Q. That was what they did with that last note of June 10th?

A. Yes, sir.

Q. Those four notes amounted to what?

A. With interest they amounted to $17,032.40; interest to the time I made the settlement.

Q. Were you indebted in any way to the corporation that commenced business last year?

A. Yes, sir.

Q. How much?

A. $3,882.53.

Q. What was that indebtedness for?
A. For merchandise and cash.
Q. You commenced business with the corporation when?
A. I think that went back to April or May of last year, 1889.
Q. And you had dealings with them up to January 9th, 1890?
A. Yes, sir.
Q. Did you buy any goods, wares, and merchandise from them or obtain any money from them?
A. I did.
Q. About what amount of business did you have with the corporation from the time you commenced with it until you broke, if you broke in last January?
A. The statement of the account with the corporation commenced on April 3rd, 1889; up to November 5th I had dealt with them $1,688.56.
Q. How much did your dealings with them amount to up to the time you broke—all that you were indebted to them, all the business of every sort, and how much has been paid?
221 A. My business up to that time amounted to $30,000 and odd dollars.
Q. The balance due, if I understand you, up to January 9th last was——
A. $3,882.53.
Q. How did you pay that amount of indebtedness down to that balance?
A. I shipped them cotton.
Q. Can you tell how many bales?
A. I could not tell exactly unless I added up all the statements. I think there were 600 and some odd bales, my recollection.
Q. You got credit for all the cotton?
A. Yes, sir.
Q. Is there a Mr. C. E. Frost through that account?
A. Yes, sir.
Q. Who is he?
A. He is the cashier of our bank at Athens.
Q. What did he have to do with your affairs in that connection?
A. If I would buy cotton during the day, say $1,000 worth, I might need $800 or $900, and I would get it from the bank and draw on the firm of Schoolfield, Hanauer and Company.
Q. Did you attach a bill of lading to the drafts?
A. No, sir; they did not require me to attach bills of lading.
Q. You shipped cotton and would draw on them?
A. Yes; and Schoolfield, Hanauer and Company
222 & 223 never demanded of me to send my drafts with a bill of lading attached. I would send them my cotton and would draw on them as I needed the money.
Q. Did you pay either or both of those debts to the firm and the corporation?
A. I did.
Q. When?
A. On January 13th, 1890.

Q. Was there any interest calculation drawn; if so, to what date?

A. To January 9th.

Q. How did you pay those two debts?

A. With merchandise, live stock, stock of goods, real estate, some cotton, and some accounts and notes.

Q. Did you enter into any writing in reference to those debts on the 13th day of January, 1890?

A. Yes, sir.

Q. What was the writing?

A. I gave the firm as well as the corporation bills of sale.

Q. Did you have a stock of goods in Athens and at Elkmont?

A. Yes, sir.

Q. Did you deliver possession of those goods to Schoolfield, Hanauer and Co.—the firm?

A. Yes, sir.

Q. How did you do that—what time of day on January 13th?

A. It was between 5 and 6 in the morning; I suppose about 15 minutes to 6.

Q. What took place?

224 A. I gave the keys of the house to Mr. Miller, representing the house of Schoolfield, Hanauer and Company. He demanded the keys of me after I had turned over everything to him.

Q. Did he lock up the house?

A. Yes, sir.

Q. Did you take any receipts from him?

A. Yes, sir.

Q. Produce them.

(Witness produces receipts)

Q. Is that the bill of sale of the property by which you paid the debt to the firm?

A. Yes, sir. (Witness identifies bill of sale as copied on page 14 (48) of this transcript.)

Q. Did you take an inventory of your stock of goods in Athens?

A. Yes, sir.

Q. How long before that did you commence?

A. I think I began on January 1st and finished on the 2nd.

Q. Did you take the inventory in one or two days?

A. I think about two.

Q. Have you got that inventory?

A. No, sir.

Q. Where is it?

A. I expect Mr. Miller has it.

Q. Who took that inventory for you?

A. My clerks.

Q. Who were they?

A. J. D. Markham, Ed. Estes, and James F. McGavock.

Q. Was anybody else concerned in it?

A. I had Mr. John Tanner to copy the things as they called them off.

225 Q. Whose handwriting is the inventory in?
A. John B. Tanner's.
Q. Did you put the value on those goods as you went through?
A. Yes, sir.
Q. Does that show the value you put on them?
A. Yes, sir.
Q. What was the basis of the value?
A. I believe the stock of goods were taken at cost. Part of it was above cost and some below.
Q. Why was some above cost and some below?
A. Goods which had been in the house for years and years and faded on the shelves were taken below cost. Goods which I had purchased at auctions and got bargains on I sometimes put them at more than I gave at market cost, at what I thought they were worth.
Q. Can you point to any items there (handing witness the inventory) which were put down above cost?
A. Yes; here is a lot of ladies' cloaks which I had purchased at a bargain and some gents' furnishing goods—underwear. They were not all that were put down above cost. I can't remember all.
Q. What did the inventory foot up?
A. $9,927.78.
Q. Did the value you put on them as a whole range above or below cost?
A. Well, I suppose about an average at cost.
226 Q. Up to the time you sold the stock of goods to the claimants had you sold any goods included in the inventory?
A. Yes, sir.
Q. Can you tell how much?
A. $380.04.
Q. In getting at the value that the claimants took the goods at what did you take off, if anything?
A. I took off ten per cent. of the amount of the invoice.
Q. Did you take off what you had sold?
A. Yes, sir.
Q. How much?
A. I took the profit on the sales ($76.28) off of the amount of the sales ($380.04) and deducted that amount ($303.76) from the other.
Q. Then you took off the sales the profits on them?
A. Yes.
Q. What did they take the goods at in the aggregate?
A. $8,631.24.
Q. In putting that value on them did you put it on to be sold at retail or as an entire stock?
A. As an entire stock.
Q. You don't understand me. What was the reasonable price of that stock of goods, retailing it out, on that 13th of January?
A. Not over fifty cents on the dollar.
Q. Did you have any goods there that had been there all the time?
A. Yes, sir.

227 Q. Did you have any or many new goods in there?
A. No, sir.
Q. Did you buy last fall as many goods as you usually did?
A. Not by 100 per cent.
Q. Your credit was good up to what time?
A. My credit was good, I suppose, until January 13th.
Q. Did you buy a stock of goods last fall at the usual time to go on?
A. I did, sir.
Q. Did you send any of those goods back?
A. Yes, sir.
Q. Can you give the names of the parties to whom you returned goods and the amounts that you returned? Have you a memorandum anywhere that you can refer to?
A. Yes, sir. In 1885 I bought $234.80 from September to January; in 1886 I bought $25,943; in 1887, $25,905; in 1888, $30,353.71; in 1889, $16,394.
Q. Why did you not buy the usual amount of goods last fall?
A. When I went on to market our prospects for a cotton crop were rather bad. I remained in New York about a week. My head clerk at home notified me nearly every day by letter, and each letter was more discouraging than the last, stating that the farmers were complaining very much about the short crop, and that it was no better than in 1881.
Q. And you did not buy as many goods?
A. No, sir.
228 Q. How many of those goods did you return?
A. (Witness reads from a memorandum, which was not handed to the stenographer.)
Q. You thought you would probably not be able to pay them?
A. Yes, sir.
Q. Did any of the parties refuse to take the goods you returned?
A. Yes, sir; Bannon Brothers, of N. Y., did.
Q. You had bought very few new goods in your store?
A. Very few.
Q. Did you carry groceries then?
A. Yes, sir.
Q. Did you have any groceries on hand?
A. I suppose I had $100 worth left.
Q. You had a stock of goods at Elkmont. How did you get at the value of them in your sale to these claimants? Had you taken an invoice of them?
A. Yes, sir.
Q. When was that taken?
A. The same time.
Q. Who took it?
A. One of my clerks at Elkmont, Mr. John W. Strain.
Q. Who assisted him?
A. Mr. D. T. Phillips and Mr. Scott.
Q. What did the invoice foot up?
A. $2,618.19.

Q. On what basis was that taken?
229 A. It was taken very badly; far above cost.
Q. Have you got that invoice?
A. Yes, sir.
Q. Did you look over it?
A. Yes, sir.
Q. How long had that stock of goods been running?
A. Three or four years.
Q. Did you have any new goods in there, bought last year?
A. Some.
Q. What did you sell that stock to the claimants at?
A. For $2,097.84.
Q. How did you get at that price?
A. I deducted 20% of the value of the stock and then deducted the amount of the sales from the time the inventory was taken until I sold out; to that I added $49, the value of two safes, two showcases, scales, and a stove.
Q. What was the market value—cash value—of that stock of goods sold in bulk at that time?
A. $1,000 would have been a big price.
Q. You got something over $2,100 in your trade?
A. Not quite that, but nearly that.
Q. What other property at Elkmont did this firm buy from you on that debt?
A. One storehouse.
Q. What did you sell that for?
A. $500.
230 Q. What was a fair, reasonable cash value for that?
A. $400.
Q. Did you sell them any real estate at Elkmont Springs?
A. Yes, sir.
Q. At what price?
A. $250.
Q. What was a real fair cash market price for that then?
A. I have no idea. I could have sold it for $200; that would have been full price.
Q. What did you give for it?
A. $100.
Q. What sort of property was it?
A. There was a rough shanty on it, without any flooring or ceiling.
Q. How long had you had it?
A. About two years.
Q. This firm got from you 46 head of stock at Owen Black's, near Athens?
A. Yes, sir.
Q. What sort of stock was it?
A. Horses and mules and mares.
Q. Were they good or bad?
A. Some were good and some bad.
Q. What did you sell them to the claimants for?

A. $2,760.
Q. What was a reasonable, fair cash price for them then?
A. About $2,200 or $2,300.
231 Q. Had any offer been made to you before this to buy this stock?
A. Mr. Hill approached me.
Q. Did he make you any offer?
A. He asked me what I would take for the whole lot I had there. He told me he would give me $2,200.
Q. What did you endeavor to get from him for the stock?
A. I asked him, "What will you give me for them?" He said he would not give over $2,200.
Q. Was that intended to be cash or on credit? Was there any money offered?
A. No, sir.
Q. Was any credit stipulated for or was it to be cash?
A. He said he would give me notes for one year.
Q. Was he entirely solvent?
A. Yes, sir.
Q. You refused to take that?
A. Yes, sir.
Q. How long was that before you broke?
A. Either two or three days—about two, I think.
Q. What did you get up that stock for?
A. I bought it from several of my customers—people who could not pay me. I asked them to bring them in; that I was hard pressed and had none.
Q. Did you have any appointment with anybody to get up a car-load of that kind of stock for sale at any time before that?
232 A. Yes; for Mr. Toney. He came there January 2nd or 3rd and asked Mr. McGavock if we had any mules on hand for sale. He said no; that we had only two or three. Mr. Toney said that he would like to get a car-load or two. He said that he would pay about $80 apiece for mules about 15 or 15 and a half hands high. I then went to several of my customers to get mules to help me out.
Q. Did Mr. Toney make any appointment to come back?
A. Yes; on Thursday or Friday.
Q. Did he come?
A. No, sir.
Q. Did you make any effort to sell the Elkmont stock of goods before you broke?
A. I did.
Q. To whom?
A. Mr. W. B. Vaughn.
Q. On what terms?
A. Cash.
Q. Did you sell any of the goods?
A. No, sir.
Q. Did he make you any offer?
A. Yes, sir.

Q. What was it?

A. For $15,000 in accounts and notes, and the storehouse and stock of goods he offered me $3,000, which I refused. That was cash.

Q. What time was that?

A. About January 6th or 7th. I don't remember the day.

Q. What did you want with the money you were endeavoring to get?

233 A. I was very hard pressed and wanted it.

Q. I believe in that bill of sale was included a piece of land somewhere in Jefferson county. Where was that?

A. I don't know exactly; down below Ensley city.

Q. What interest did you have in that?

A. Three-sixteenths interest.

Q. Who did the other belong to?

A. To various parties. My brother-in-law had three-sixteenths and Mr. Adler had three-sixteenths, and his brother had three-sixteenths, and another gentleman had four-sixteenths.

Q. What sort of property was it?

A. It is a piece of property way out in a field; eighty acres.

Q. When did you buy your interest?

A. In the winter of 1886.

Q. Was that before or after or during the "boom" known to fame?

A. Right during the boom.

Q. What did you give for it?

A. Between $500 and $600; about $35 an acre.

Q. Did you put your interest on the market after that?

A. I did.

Q. Did you make any effort to sell it?

A. I did, sir.

Q. Were you ever able to get back what you gave?

A. No, sir.

Q. What did you sell that to these claimants for?

A. $500.

234 Q. What was the reasonable value of that property then in cash?

A. I don't suppose it could have brought over $250; I never could get an offer on it.

Q. You put in this sale some cotton. Where was that?

A. In the warehouse of Schoolfield, Hanauer and Co. at Memphis.

Q. Was that cotton that you had shipped to them?

A. Yes, sir.

Q. How much was it?

A. Nineteen bales.

Q. What did you get for that?

A. $781.11.

Q. Was that its market value or not?

A. It was above the value.

Q. How much above?

A. About sixty-two and a half cents a bale profit, average.
Q. Was that a fair, reasonable price for that cotton?
A. Yes.
Q. Was it at, below, or above the market price?
A. Above.
Q. Did you get from these men more or less than the market price?
A. I got about 60 cents more a bale; it was a low grade of cotton.
Q. To make out the amount you owed them, did they get anything else besides this property?
A. Yes, sir.
Q. What was it?
A. One account and two notes; one note on Charles R. Getty
235 for $1,308.94, an account on Frank Petty of $186.76, and one note on Sam. Donevent for $13.87.
Q. What did you get on these choses in action?
A. $177.
Q. That was all the property they got from you on the day of the sale?
A. Yes, sir.
Q. How did you pay the corporation their debt—$3,882.53?
A. I paid that with accounts and notes.
Q. Who did you make this settlement with?
A. Mr. H. G. Miller.
Q. Did he in anywise protest against the prices of this property?
A. He did.
Q. Have you got a list of the choses in action transferred to the corporation?
A. Yes; this is it. (Identifies the instrument by which Harry Warten conveyed property to the Schoolfield-Hanauer Co. Claimants introduce this instrument in evidence, not handed to the stenographer.
Q. Is that list footed up?
A. No, sir.
Q. How much does it amount to?
A. $3,882.53.
Q. Did you pay that debt in full? Is anything due on that debt?
A. The claims I sold amounted to $3,868 and something.
Q. Did you get receipts for both of those transfers?
A. Yes. (Reads as follows:)

"Received of Henry Warten, in real estate, goods, choses in action, specified in the bill of sale to us of even date herewith,
236 $17,032.40 in full of all dues to date, January 13th, 1890.
SCHOOLFIELD, HANAUER & CO."

"Received of Henry Warten, in notes, accounts, and claims, $3,882.53 in full of all dues to date, January 13th, 1890.
(Signed) THE SCHOOLFIELD-HANAUER COMPANY,
Prospect Station, Giles County, Tennessee."

Q. Did the corporation take all the notes and claims at their par or nominal value?
A. They did.
Q. They were not worth over that?
A. No, sir.
Q. Did you go to Prospect, Tennessee, that morning?
A. Yes, sir.
Q. What time did the train pass Athens that morning going to Elkmont?
A. About six o'clock.
Q. Were the goods at Elkmont delivered to Mr. Miller on that trip?
A. They were.
Q. What did you go to Tennessee for?
A. The corporation did not have any agent in our State, and my attorney told me that any foreign corporation was required to have an agent in this State.
Q. You mean this corporation did not have a license in Alabama?
A. Yes, sir.
Q. How far is Prospect from Alabama, the State line?
A. Only two miles.
237 Q. Who is Carey Gilbert, the subscribing witness to this instrument?
A. He is the squire up there, the magistrate.
Q. When did you come back from Prospect?
A. I come back on the 11-o'clock train.
Q. When you made this sale or afterwards or at any time did you have any interest, right, or title left in you?
A. I did not.
Q. When you got through with those transactions was or not your entire indebtedness both to the firm and the corporation entirely extinguished?
A. It was, sir.
Q. Was any benefit of any sort reserved to you in either of those transactions?
A. It was not.
Q. After that 13th day of January—after these papers were executed—was all this property mentioned here delivered to Miller?
A. It was.
Q. And those choses in action of the corporation and the property in the bill of sale, were they delivered to him?
A. Yes, sir.
Q. After those transactions there, what did you have?
A. I had nothing.
Q. Did you make a general assignment?
A. Yes, sir.
Q. What time was that executed?
A. On the same day between 11 and 12 o'clock.
238 Q. Where is that general assignment?
A. I do not know. I suppose the assignee has it.

Q. Where was that executed?
A. At the court-house.
Q. In California?
A. No; in Athens, Alabama.
Q. Who was the assignee in it?
A. James F. McGavock.
Q. After that was executed what did you have in the way of property?
A. Nothing but my exemptions.
Q. Were some exemptions reserved to you in that assignment?
A. Yes, sir.
Q. Was there an inventory taken of your effects afterwards?
A. Yes, sir.
Q. What did that inventory foot up—nominal value?
A. Between $50,000 and $60,000.
Q. What did it consist of?
A. Notes, accounts, and tax land.
Q. Was there any real estate in it?
A. Yes, sir; the tax land was the real estate.
Q. How old were those debts or the bulk of them?
A. Some of them run from 1883.
Q. What proportion of them was created last year?
A. About two-thirds.
Q. And about two-thirds of that $50,000 was not over a year old?
A. No, sir.
239 Q. Who were those claims on?
A. Some of them were on citizens of other counties; most of them were on citizens of Limestone Co.
Q. How many men were represented on that inventory?
A. I suppose about 1,000.
Q. What was the extent of your business for the last several years?
A. Between $75,000 and $90,000.
Q. You were doing the largest mercantile business in the county?
A. Yes, sir.
Q. What was the cause of your failure?
A. The failure of our cotton crop last year.
Q. To what extent was there a failure of the cotton crop?
A. I suppose it would be about 75 % failure.
Q. Then it would be about 25 % of an average crop?
A. Yes, sir.
Q. Was there or not last fall a public meeting by the merchants to take into consideration the condition of the country?
A. There was.
Q. What were you worth in your estimation on the 1st day of September, 1889?
A. Between $40,000 and $50,000.
Q. What proportion of that $50,000 in the inventory could have been reasonably collected with an ordinary crop year there, you owning the claims?

240 A. I think I could have collected about $40,000.

Q. After you broke on January 13th, 1890, were any contributions made by your neighbors for the support of your family?

A. I had rather not mention that.

Q. If anything was given, did you return it?

A. I did.

Q. Did you go in any other business after you sold out?

A. Yes.

Q. Did you do any business for the assignee?

A. Yes, sir; he engaged me.

Q. How long after you broke?

A. About three days or four.

Q. Did you go in there to work for the assignee before or after the levy?

A. He engaged me, I think, one day before the levy—on Wednesday.

Q. Did you do any work for him before the levy?

A. I did.

Q. Did or not the marshal take possession of the books of the assignee?

A. He did.

Q. How long did that stop your work?

A. Several days.

Q. How long after did you make out a list of your assets and liabilities?

A. About two or three weeks.

Q. Who has that?

A. The assignee. The assignee came to me and asked me if I would like to look over the books.

241 Q. Were you or not more familiar with those transactions than anybody else?

A. I was.

Q. Could anybody but you have made out a correct list of your assets and liabilities?

A. They could not.

Q. Are there included in those assets any notes, mortgages, and accounts?

A. Yes, sir.

Q. Were any or many of them entitled to credit?

A. Yes, sir.

Q. In making out that list did you have to resort to your books to find out the balances?

A. Yes, sir.

Q. I believe you stated that you were engaged in there about three weeks; after that what did you do?

A. I went to Birmingham to see about getting a position.

Q. What efforts did you make there?

A. My brother-in-law, Mr. Nat. Malone, came and insisted that I should come down and try to get a position.

Q. Did he make any efforts to get you a position?

A. Yes, sir.

Q. How long were you down there?
A. Several days.
Q. Did you get a position there?
A. No, sir.
Q. Did any arrangements down there for you collapse or fall through or anything of that sort?
A. Yes, sir.

Claimants offer in evidence the general assignment, as follows:

THE STATE OF ALABAMA, }
Limestone County. }

242 This indenture made this Jan'y 13th, 1890, between Henry Warten, of the first part, and James McGavock, of the second part, witnesseth, that, whereas, the said party of the first part is indebted to divers persons in divers sums of money, which, by reason of sundry misfortunes and losses he has become unable fully to pay, and is desirous to provide for the payment thereof, as far as possible, by an assignment of all his property and effects, saving and excepting only what he is entitled to under the exemption laws of this State, as hereinafter specified: Now, in consideration of the premises, and of the sum of one dollar to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part hath granted, bargained, sold, assigned, transferred and set over, and by these presents doth grant, bargain, sell, assign, transfer and set over, unto the said party of the second part, all and singular, the land, tenements, hereditaments, and appurtenances, goods, chattels, stocks, mortgages, bonds, notes, debts, choses in action, claims, demands, property, and effects of every description belonging to the party of the first part, or in which he has any right or interest: reserving and withholding only his exemptions as a resident of this State, a list of which selected by
243 him, is hereto attached, marked "Schedule A:" to have and to hold the same unto the said party of the second part, in trust, nevertheless, to and for the uses and purposes following:

First. To take possession of said property, hereby assigned, and to sell and dispose of the same, with all convenient speed and diligence, either at public or private sale, for the best prices that can be obtained therefor, and to collect all such debts and demands as may be collected.

Secondly. Out of the proceeds of such sales and collections, to pay and discharge all the just and reasonable expenses, costs and charges of executing this assignment, together with a reasonable commission or compensation to the said party of the second part, for his services in executing this trust.

Thirdly. Out of the residue of the proceeds of said sales and collections, to pay and discharge in full, if there be sufficient for that purpose, all the debts and liabilities now due, or to become due, from the said party of the first part, together with all interest due and to become due thereon, and if there be not sufficient of said proceeds to pay said debts and liabilities in full, then to

apply the same *pro rata*, so far as they may go, to the payment of the said debts and liabilities according to their amounts respectively. And, if after paying all the expenses, costs
244 and charges attending the execution of this trust, and the lawful debts and liabilities owing by the said party of the first part in full, there should be a surplus of said proceeds remaining in the hands of said party of the second part, then the same shall be returned to the said party of the first part, his representatives or assigns. And for the better execution of these presents and this trust the said party of the first part doth hereby constitute and appoint the said party of the second part his true and lawful attorney, with full power and authority, for the purposes and uses of this trust, to demand and receive from all persons the property and debts herein assigned: to sue for and recover the same: to give acquittances: to defend suits: to make deeds and instruments necessary in the *the* carry- out hereof: to employ agents and attorneys: and to do and perform all acts and things necessary and lawful in the premises: hereby ratifying and confirming whatever the said party of the second part may lawfully do in the premises.

And the said party of the second part doth hereby accept the trust hereby created and reposed in him by these presents: and doth for himself, his heirs, executors and administrators, hereby covenant & agree with the said party of the first part, his representa-
245 tives and assigns, to faithfully and diligently execute this trust to the best of his knowledge and ability.

In witness whereof the parties hereto have hereunto set their hands and affixed their seals this Jan'y 13th, 1890.

(Signed) HENRY WARTEN. [SEAL.]
J. F. McGAVOCK. [SEAL.]

Witnesses:
JAMES E. HORTON.
F. S. WOOD.

SCHEDULE C.

A List of Personal Property Selected by Me, Henry Warten, under the Exemption Laws of this State, of which I am a Resident.

1. All my wearing apparel.
2. All the wearing apparel of my family.
3. All family pictures, portraits, and books in use in my family.
4. My surry $65 00
5. My cow 7 50
6. Half barrel of sugar 10 00
7. Coffee, fifteen lbs. 3 75
7. One barrel flour 5 00
9. Lard, one hundred lbs. 7 00
10. Meat, one hundred lbs. 6 00
11. Cash 895 75

(Signed) HENRY WARTEN.

Subscribed and sworn to before me this Jan. 13, 1890.

JAMES E. HORTON,
Judge of Probate.

Q. Is that the schedule made out by you?
A. No, sir; that is a copy.
246 Q. As far as you can see, is that a correct copy?
A. Yes, sir.
Q. Is that account added up at the bottom?
A. It is not. The one I made out was.
Q. You had deeds to several pieces of real estate, did you not?
A. Yes, sir.
Q. Do you know of what value?
A. No, sir.
Q. Did you make any arrangements to travel as a drummer for any house?
A. Yes, sir.
Q. Why did you not do it?
A. My wife would not let me.
Q. Who was it you were in negotiations with about becoming a drummer?
A. Friedman Brothers.
Q. Did you go into the store of these claimants as a clerk at any time?
A. I did.
Q. When?
A. It was in Feb'y.
Q. For what length of time did you stay there?
A. 4 months.
Q. At what price or salary?
A. $100 per month.
Q. Who was the head man in there?
A. Mr. Walter Miller.
Q. Was he there all the time?
A. Yes, sir.
Q. What did you do in there?
A. My occupation in there was to sell goods as salesman.
Q. Is it not a fact that the amount of custom a clerk can
247 bring to a house has something to do with his wages?
A. Yes, sir.
Q. Is it or not the duty of a clerk to sell all the goods he can for his house?
A. It is, sir.
Q. Did you or not get your brother-in-law, Nat. Malone, to buy goods at that house?
A. I did.
Q. How much did he buy there?
A. About $100 for his Birmingham house and about the same amount for his Decatur house.
Q. Who else did you get to buy goods there?

A. I got Messrs. Hill and Legg. They bought about $700 or $800 worth.

Q. The goods sold at what price?

A. Much below cost; some of them at half price.

Q. Did you have a large patronage in the country when you broke?

A. I did.

Q. Did you get any or all to come there that you could?

A. I did, sir.

Q. State to the jury what, if anything, you had to do with the local in that paper in which you are put down as manager.

A. I went up to Mr. Rawls, the editor of the paper. Mr. Walter Miller told me to go and put a local in for them. I went into
248 his office and told Mr. Rawls that Schoolfield, Hanauer & Company wanted a local in the paper in regards to some goods, and that the goods would be sold at cost, and I walked out. The next morning I noticed this local, and I went to his office and said, "Mr. Rawls, you made a mistake here. You have got my name here as manager. I'm not manager of Schoolfield, Hanauer & Company's store; I'm a clerk. Walter Miller is boss." He told me that he thought it was complimentary to me, and I told him it was a mistake, and that some people might take advantage of it.

Q. Did you direct him to take it out?

A. Yes, sir.

Q. Did he take it out?

A. He promised to do it.

Q. Did you see it any more?

A. I think not.

Q. Did you get your pay at $100 a month?

A. Yes, sir.

Q. Did you get any more than that?

A. No, sir.

Q. How were you paid? Who paid you?

A. Walter Miller.

Q. How did you get your compensation—in goods or money or what?

A. Whenever I wanted ten or twenty or fifty dollars I would call on him for it and he would let me have it, and he would put
249 it down on his cash book.

Q. Did you get any of it in goods?

A. Yes, sir.

Q. Did you pay from September 1st, 1889, to the day you broke anybody outside of these parties you spoke of here?

A. I did.

Q. Taken altogether, how much did you pay from September 1st to January 13th?

A. I paid about $55,000 or $60,000.

Q. Have you a list of the persons you did pay?

A. Yes, sir. (Witness reads this list.)

Q. About how much of that was in cash and how much in property?

A. Between $25,000 and $30,000 in cash; the balance I paid with my property—merchandise and real estate.

Claimants introduce this statement in connection with the testimony of Warten.

Q. Is that added up?
A. No, sir.
Q. Has it got the dates?
A. No, sir.
Q. You can get them?
A. Yes, sir.
Q. Those are all just debts against you that you settled in that way?
A. Yes, sir.
Q. What is the aggregate of that?
A. $57,000 and some odd.

250 Q. Have you or not been called upon by everybody that has had anything to do with your estate to give them aid or assistance about claims and accounts and matters in dispute? Has or not everybody had to go to you for information?
A. Yes, sir.
Q. Have you had anything to do with these accounts, claims, or property for your own benefit?
A. No, sir.
Q. Has or not the assignee, Mr. McGavock, and Mr. Wood constantly resorted to you for information?
A. Yes, sir.
Q. Has not the plaintiffs' attorney, Mr. Tom Sanders, more than once applied to you to find out about these things?
A. He has. They all would come to me and ask me in regard to things; they did not know the parties or something of that sort. Mr. Sanders brought me two or three men who denied their accounts.
Q. Did Mr. Miller know the men on whom he had these accounts transferred by you?
A. No, sir.
Q. Do you know how much he had collected on these accounts previous to last June?
A. I do not.
Q. Did you have that store engaged for this year?

A. Yes, sir.

251 Q. At what price?
A. $500.
Q. From whom?
A. Dr. Westmoreland.
Q. Did he have your obligation for it?
A. There was a contract.
Q. Do you know whether or not Mr. Miller made a contract with him for the rent of the store for the balance of the year?
A. Yes.

Q. What about the insurance? Did it go out or did Mr. Miller take it up?

A. That was transferred over to the house of Schoolfield, Hanauer and Company.

Q. Do you know of any efforts made by these claimants to sell any or all of this property they got from you on their debts?

A. Yes, sir.

Q. If you know, state whether these claimants during the months of January, February, and March, 1890, made any efforts to sell the property they had thus obtained from you to other persons besides your wife.

A. They did.

Q. In bulk or by retail or both?

A. In bulk.

Q. Did they sell any of it at retail for cost or above or below cost?

A. Yes, sir.

Q. Have you any idea about how much?

A. No, sir.

Q. What became of the mules they got from you?

252 A. They sold some at Athens, I think, and they shipped some to Memphis.

Q. Did they keep the goods for sale at the store there any length of time after they got them from you?

A. Yes, sir.

Q. How long?

A. Until June.

Q. Who was in that store making efforts to sell these goods?

A. Walter Miller and J. F. McGavock.

Q. Did all of you make efforts to sell out the goods at cost or below cost?

A. We were selling out at cost and below cost.

Q. Did you put notices of that in the paper?

A. Yes, sir.

Q. Did you buy the goods brought in to replenish the stock?

A. Yes, sir; some of them.

Q. When?

A. About the last of April. I did not buy all the goods. I think it was three lots.

Q. When was that?

A. The latter part of April or the early part of May.

Q. Did you buy those for yourself or for these claimants?

A. For Schoolfield, Hanauer and Company.

Q. Were you an expert, competent man at buying goods at market? How long had you been engaged in that business?

A. About 8 or 9 years.

Q. Had you every year been North or to Louisville to buy goods?

253 A. Yes, sir; two or three times a year.

Q. Against whom were the bills made out?

A. Schoolfield, Hanauer and Company.

Q. To whom were the goods shipped?

A. To Schoolfield, Hanauer & Company.
Q. Were they all bought on one trip?
A. Yes, sir.
Q. Before or after the cyclone?
A. Right after the cyclone.
Q. What did Miller buy to bring in there about that time?
A. Some few goods.
Q. What amount do you suppose of goods were put in there that you did not buy?
A. About $200.
Q. What did the bills you bought amount to?
A. About $1,200.
Q. If you had made purchases in the ordinary course of business, about how many goods do you suppose you would have brought in there from Jan'y to the 1st of June?
A. Between $4,000 and $5,000.
Q. Who did you buy from?
A. Three parties in Louisville.
Q. Who were they?
A. J. M. Robinson & Co., Hess, Henle & Co., and another firm.
Q. Did you pay for the goods?
A. I did not.
Q. Do you know whether anybody did?
A. I do not.

Q. When did Mr. Miller come to Athens the last time be-
254 fore you sold to him?

A. He came there on Saturday, Jan'y 11th.
Q. What time on Saturday did he get there?
A. About the first I saw him was at dinner time.
Q. When was the agreement made between you two as to these debts?
A. On Saturday evening.
Q. Do you know when these papers were drawn up?
A. Yes, sir; Saturday night.
Q. Were you at your store Sunday night?
A. I was not.
Q. Did you have any light in your store Sunday night?
A. I was not there and did not have any light. There may have been some light there. Some of my clerks stayed there.
Q. They usually have a light in there until bed time?
A. Yes; I suppose the boys go in there at any time after the store is closed on Sunday.
Q. Did you keep all of your clerks last fall?
A. I did not. The crop appeared to be rather short and I discharged two.
Q. I did not understand you awhile ago about how your wages were settled the four months you were with Miller. State to the jury how that was.

255 A. I got money whenever I needed it from Walter Miller, and some goods for my wife and children—about $70 worth—and a horse from Mr. Miller for about $100.

Q. Was that a fair price for that horse?
A. Yes, sir.
Q. Have you ever since the 13th day of January had any individual dealings with either this firm or the corporation?
A. I have not.
Q. You bought no goods and made no accounts?
A. No, sir.
Q. Did you have any connection with them in your individual capacity other than as clerk?
A. No, sir.
Q. When you sold this property to them on the 13th day of January, 1890, was there any agreement or understanding or anything of that kind between you about your becoming a clerk or having anything to do with the firm or the corporation?
A. There was not.
Q. Did your wife buy back any of this property afterwards?
A. She did.
Q. When?
A. In the month of June.
Q. How did the negotiations in reference to it begin?
A. It was the latter part of May that I, as agent for my wife, asked Mr. Walter Miller to write home and see what his people would take for the stock of goods.
Q. Did he do that?
A. Yes, sir.
256 Q. Had your wife or you for her found anybody that would back her up or set up the money?
A. Yes, sir.
Q. Who was it?
A. Hess, Henle and Company, of Louisville.
Q. Did you go to Memphis?
A. Yes, sir.
Q. Was the trade made there?
A. Yes. We came to an understanding about the amount that should be paid.
Q. Were the papers drawn up there?
A. Yes, sir.
Q. Who drew them up, or do you know?
A. I think their attorney, Mr. Poston.
Q. Is the contract made by you and your wife here correctly set out in these papers?
A. Yes, sir.
Q. What did she buy from them?
A. She bought three pieces of real estate—the Jefferson county land.
Q. What price did she pay for that?
A. $500. Another was the Elkmont real estate. She purchased that at $500.
Q. What was the third piece?
A. The Elkmont Springs property. She bought that at $2.50.
Q. What else did she get?

A. She bought from the corporation $3,041 worth of claims for $3,041.32.

Q. Did she get any accounts due the store at Athens?

257 A. Yes; $1,700 worth for $1,200 and some odd.

Q. Did she get the remnant of goods left there?

A. Yes, sir; I paid the firm $3,500 and some odd for the stock of goods and the storehouse at Athens and the accounts and notes. There was one note on Charles R. Getty for about $1,400, and one note on Sam. Donevent for about $13, and a note on John W. Hill.

Q. What was that?

A. $356.

Q. Did you get any accounts due the store there that these claimants had taken charge of in January?

A. Yes, sir; about $1,700 worth.

Q. You took them at about $1,200?

A. Yes, sir.

Q. Anything else in it?

A. No, sir.

Q. If I understand you, in January you sold $3,882.53 worth of choses in action to the corporation in settlement of a debt they had against you?

A. Yes, sir.

Q. How much of those claims had they collected before this sale was made to your wife?

A. $800 and something.

Q. And how much was still due?

A. $3,000. She gave $1,572 for them.

Q. Then there were three claims in with the other property that you sold to the firm. What were they?

258 A. One on Frank Petty for $186.76; a mortgage on Charles R. Getty for $1,308, and a note on Sam. Donevent for $13.87. She collected the Frank Petty account of $186.

Q. Then you bought back the Getty note and the Donevent note?

A. Yes, sir; they were estimated with the stock of goods. I paid for the stock of goods and the fixtures and the safe and these notes $3,550.

Q. Those claims the corporation had had, were they good or not?

A. I considered most of them good.

Q. I believe you said that nearly $3,000 of them were uncollected. You think you will be able to realize nearly all of that?

A. Yes, sir.

Q. What were the terms of the sale?

A. $3,227 cash and the balance in notes.

Q. When were the notes due and what amounts cash have you paid on these, if you remember?

A. There was one note for $500, due August 1st, 1890; one for $177.31, due September 1st, 1890; one for $500, due October 1st, 1890, and one for $1,000, due November 1st, 1890, and another for $1,381.63, due December 1st, 1890.

Q. Then what was the total purchase?

A. $7,600 and something.

Q. $3,227 cash and how much in notes?
A. $4,400 and something.
Q. Was the $3,227 paid in cash?
A. $3,000 in New York exchange and $227 in currency.
259 Q. Where did your wife get the money?
A. In Louisville; she sent her note for $3,000 to Hess, Henle and Company to be discounted.
Q. They had previously promised to back her up in the purchase of the goods?
A. Yes, sir.
Q. Where did the other $227 come from?
A. Part of it she had on hand, and I had given her part of my exemptions.
Q. How much was that?
A. $550 and something.
Q. Then the other $227 came out of the exemption money you got in the assignment?
A. Yes, sir.
Q. Have these notes to the firm of hers been paid?
A. Yes; those that have fallen due.
Q. Have you got the notes?
A. Yes, sir. (Witness produces the notes and reads as follows:)

"1. $500.00. ATHENS, ALABAMA, *June 10th*, 1890.

On July 1st, after date, I promise to pay to the order of the Schoolfield-Hanauer Company five hundred dollars at Memphis National bank, Memphis, Tennessee, value received.

MATTIE A. WARTEN."

Endorsed: "The Schoolfield-Hanauer Co., by W. W. Schoolfield, pres."

"2. $500.00. ATHENS, ALABAMA, *June 10th*, 1890.

On August 1st, after date, I promise to pay to Schoolfield, Hanauer & Company, Memphis, Tennessee, at German bank, value received.

MATTIE A. WARTEN."

260 That was credited on July 9th "by cash $300." The balance was paid later.

"3. $177.31. ATHENS, ALABAMA, *June 10th*, 1890.

On September 1st, after date, I promise to pay to the order of Schoolfield, Hanauer and Company one hundred and seventy-seven and .31 dollars at German bank, Memphis, Tennessee, value received.

MATTIE A. WARTEN."

"4. $362.59. ATHENS, ALA., *June 10th*, 1890.

On September 1st, after date, I promise to pay to the order of the Schoolfield-Hanauer Company three hundred sixty-two and $\frac{59}{100}$

dollars at Memphis National bank, Memphis, Tennessee, value received.

MATTIE A. WARTEN."

"5. $500.00. ATHENS, ALA., *June 10th*, 1890.

On October 1st, after date, I promise to pay to the order of Schoolfield, Hanauer and Company five hundred dollars at German bank, Memphis, Tennessee, value received.

MATTIE A. WARTEN."

Q. Are those notes endorsed as paid on the back?

A. Yes, sir.

Q. What is still outstanding on that purchase?

A. There is one note for $1,000, due November 1st, 1890, and one due December 1st, 1890, for thirteen hundred and some odd dollars.

Q. All that have fallen due have been settled in the way you speak of?

A. Yes, sir.

261 Q. In making that purchase was it contemplated by Hess, Henle & Company that you should, as husband, manage your wife's business?

A. Yes, sir.

Q. Was it a high or low or reasonable price you gave for this property?

A. About reasonable.

Q. Were these goods in the house in which you used to do business?

A. Yes, sir.

Q. Is that the old stand you had?

A. Yes, sir.

Q. Was there any other suitable place place for such a business as you could do in town?

A. There was not.

Q. Under the circumstances was that a reasonable price for all the property?

A. It was about reasonable, I should say.

Q. You got these choses in action at a large discount?

A. Yes.

Q. What did you put the goods at in your own mind in making the trade?

A. About $3,000.

Q. Are you working that stock off with the new stock you have brought in?

A. Yes, sir.

Q. How much have you bought for your wife since then?

A. Between $5,000 and $6,000 worth of goods.

Q. Where at?

262 A. Some in Cincinnati, some at Memphis, and some at Louisville.

Q. In her name?

A. Yes, sir; in her name.

Q. Were the bills transmitted to her in her name?
A. Yes, sir.
Q. And the goods shipped in her name?
A. Yes, sir.
Q. Did you or not at any time after you sold out make any efforts to get your friends to set up a stock of goods that you might go to work on yourself?
A. I did.
Q. Would they do it?
A. They would not.
Q. Why would they not do it?
A. Because they said if they would some of the creditors would sweep it away from me.
Q. These goods were bought by your wife on credit?
A. Yes, sir.
Q. Did you have any difficulty in getting credit?
A. I did not.
Q. Then, if I understand you, these two Memphis establishments sold you the remnant of everything that they had left for your wife?
A. Yes, sir.
Q. Had they made any or many efforts to sell out to other people?
A. They did.
Q. Publicly or privately?
A. Both.
Q. You were in the house about four months as a clerk?
A. Yes, sir.
Q. What time was that?
263 A. From the 1st of February till about the 1st of June.
Q. Were they making or losing money in there efforts to sell out these goods at cost or below cost?
A. They were losing money.
Q. What was the character of the patronage you had for your store in Limestone county—small or large, good or bad?
A. I had the largest of any merchant in Athens.
Q. What proportion of them were among the best patronage in the county?
A. The country people.
Q, What proportion did you regard as good? Was all of it or one-half or was it just a fine trade?
A. I had a fine trade.
Q. Then you had scattered over that county men who were friends of yours in a commercial way?
A. Yes, sir.
Q. Men who preferred to go to you?
A. Yes, sir.
Q. A good many of them came back when they heard your wife had set up?
A. Good many of them came back.
Q. Have you made or lost money for her since she set up?

A. I have made money for her.
Q. What salary do you get?
A. I get such a compensation as generally the husband gets for managing his wife's affairs.
264 Q. You are attending to her affairs for her?
A. Yes, sir.
Q. Is your wife able to come to this court as a witness?
A. She is not.
Q. Is she under the treatment of a doctor?
A. She is, and has been at the point of death for the last two months.
Q. Have you any certificate from Dr. Hoffman as to her condition?
A. I have not, but will have. I could not see him yesterday.

Cross-examination by MILTON HUMES, Esq.:

Q. Mr. Warten, how long did you say your wife had been sick?
A. She has been sick ever since August.
Q. Has she ever been subpœnaed as a witness in this case?
A. No, sir.
Q. And this suit was brought in January of this year?
A. Yes.
Q. Was she subpœnaed at the April term of this court?
A. She was not, but she would have come here at call.
Q. You were here in April. Was she here?
A. She was not.
Q. Have interrogatories ever been filed here to take her deposition?
265 A. There has not.
Q. I believe you stated in answer to Mr. McClellan's question that your customers were among the best in the county?
A. Yes, sir.
Q. Do you refer to these customers that are owing that $55,000 that you spoke of?
A. I stated two-thirds of them.
Q. Two-thirds of them are these that owe that $55,000?
A. Yes.
Q. Have you got that general assignment?
A. I have.
Q. Is this the original paper?
A. Yes, sir.
Q. In whose handwriting is the body of that paper?
A. Mr. McClellan's.
Q. When was that prepared?
A. I think a few days before the 13th of January.
Q. What day of the week was the 13th?
A. Monday.
Q. How many days before and on what day of the week?
A. My best recollection is that it was on Thursday or Friday.
Q. Before Mr. Miller came there from Memphis?

A. Yes, sir.
Q. When was this schedule fixed up?
A. After the assignment.
Q. The assignment was fixed up on the 13th, and this paper was not fixed up until after that?
A. No, sir.

266 Q. And you say this assignment was prepared by Mr. McClellan, the lawyer who has been examining you, on Thursday or Friday before the 13th day of January?

A. Yes, sir.
Q. This paper reads (reading it). When did you direct Mr. McClellan to prepare it?
A. I told him on Saturday morning or evening, I think. I remember now.
Q. So you were mistaken about having directed him to do it on Thursday or Friday and about having told him before Mr. Miller got there?
A. I don't remember. I went down to his office before, on Thursday or Friday (I don't know which), and told him to write the form of the assignment without the names.
Q. What day was it?
A. I think it was on Saturday.
Q. And you state that you were mistaken when you said that it was on Thursday or Friday?
A. I think so.,
Q. Was it after Mr. Miller got to Athens?
A. It was after.
Q. Then you were mistaken about that also?
A. I think so.
Q. Did you have a conversation with Mr. Miller before you went to see Mr. McClellan?
A. I did.
Q. Did you tell him what you intended to do?
A. I did not.
Q. You withheld that from him?
A. I did.

267 Q. Did you tell him that you had directed Mr. McClellan to prepare this paper for you providing for a general assignment?

A. I did not.
Q. Had not Mr. Miller employed Mr. McClellan to represent him?
A. Not to my knowledge.
Q. Didn't you know that Mr. Miller was advising with Mr. McClellan as his counsel? Don't you know that he advised with him on Saturday?
A. Not before I saw Mr. McClellan. I saw Mr. Miller go there.
Q. Did he not advise with Mr. McClellan as his counsel?
A. I do not know, sir.
Q. Don't you know that he did?
A. The only time I saw him with Mr. McClellan was on Saturday night, when I took him down there after supper. I went down

there and told Mr. McClellan to draw up the papers—the bill of sale.

Q. You had already told him previous to that to prepare this deed of assignment, hadn't you?

A. I did not.

Q. When did you tell him to prepare this deed of assignment?

A. I told him on Saturday morning, I think.

Q. Was not that before Saturday night?

A. Yes, sir.

Q. Did you not tell him that you intended to make a general assignment?

268 A. Yes; I did not tell him when, though.

Q. Do you say that you never had spoken to him in reference to that assignment before Saturday?

A. I did not.

Q. You never had spoken to him on the subject at all?

A. No; some time before that I had concluded to make an assignment.

Q. When?

A. Maybe a week or ten days before.

Q. Then you had spoken to him about making an assignment?

A. Yes, sir.

Q. I am speaking now of this instrument. Now, you say that you spoke of that to him about a week before?

A. I told him, a week or so before that, that I was afraid I would have to make an assignment, but I did not tell him to prepare it. That was the beginning of December or the latter part of November of the year previous.

Q. Did you speak to him afterwards about it?

A. Not until that Saturday.

Q. Then you mentioned it to him about the latter part of November and did not speak to him about it again until Saturday previous to January 13th, which was Monday?

A. I think several days before that week I went to his

269 office and told him that I was afraid I would have to go under in a few days.

Q. When was that second time?

A. A few days before the 13th.

Q. When was that?

A. Either on Wednesday or Thursday.

Q. So you spoke to him in the latter part of November or the first of December, and you spoke to him again, the second time, on Wednesday or Thursday and again on Saturday?

A. Yes, sir.

Q. He has been Mr. Miller's attorney all the time, has he not?

A. No, sir.

Q. When was he not his attorney?

A. The only time I ever saw him speaking to Miller was on the Saturday night I went down to his office.

Q. Did he not advise with Miller there?

A. Not in my presence. I was doing the business that night.

We had concluded on the sale on Saturday evening. Saturday night I told him to fix up the papers. Mr. McClellan told me that he had to leave for Montgomery that Sunday.

Q. So he prepared this paper—the general assignment—on Saturday and not until Saturday?

A. I do not know when he prepared it; I only was speaking about making an assignment.

270 Q. Then you never did tell him to prepare the assignment at all, did you?

A. I merely was in conference with him in regard to the matter.

Q. When you directed him to prepare the paper on Saturday did you intend at that time to reserve all of this property for Schoolfield, Hanauer and Company?

Claimants object to the acts, conduct, and declarations of this granter made out of the presence of the grantee, either before or after this transaction, on the ground that it is incompetent evidence against the grantee. Objection sustained, and plaintiffs except.

Q. This deed of assignment says that it assigns all of your property and effects, saving and excepting only what you are entitled to under the exemption laws of this State as hereinafter specified. Was the property you transferred to Schoolfield, Hanauer and Company a part of that property?

A. It was not.

Q. You say that this paper you had directed him to prepare on Saturday morning?

A. I had spoken to him about an assignment.

Q. When was it that you told Mr. McClellan to prepare the deed of assignment for you?

A. I think it was on Saturday.

271 Q. What time on Saturday was it?

A. I went down to his office, I think, in the evening, after dinner.

Q. You said awhile ago it was in the morning. Was it before or after Mr. Miller got there?

A. I think I had spoken to Mr. McClellan before Mr. Miller got there.

Q. I ask you now if it was before or after he got there.

A. I never told him to prepare this paper until after I had paid Mr. Miller.

Q. When did you pay Miller?

A. I paid him on Saturday evening—that is, I had traded with him on Saturday evening, but did not turn over the property then. I just had mentioned the articles which I expected to pay to him to pay his debt. That was right after he came.

Q. Was that before or after supper that you went to Mr. McClellan's office?

A. It was before. I went to his office one day and told him that I had telegraphed Mr. Miller to come on, and that I wanted to pay both the firm and the corporation. I asked him if I could make preferences in the State of Alabama. He said I could. I then went

ahead, paid various parties round town, and also paid the firm and the corporation. I never made this assignment nor recognized or had it until after I sold out to the firm and the corpo-
272 ration—several days after.

Q. You say you did not direct him to prepare this until after you had sold out to Schoolfield, Hanauer and Company?

A. No, sir.

Q. You need not be trying to protect Mr. Miller?

A. I am not. The paper shows that.

Q. When was it you directed Mr. McClellan to prepare this deed of assignment?

A. I think it was about 11 or 12 o'clock or maybe about an hour or two later.

Q. Was it 11 in the morning or in the night?

A. In the morning.

Q. At 11 o'clock you went to his office and directed him to prepare this deed of assignment.

A. It was during the day. I don't remember exactly the hour.

Q. When did Mr. Miller get to Athens?

A. I think about dinner time.

Q. Then you went to Mr. McClellan's office and told him to prepare this paper before Mr. Miller got there?

A. No, it was after.

Q. Then you went to his office and told him to prepare this paper after you had this conversation with Miller?

A. I think I told Mr. McClellan, after Mr. Miller was there, that I wanted to sell to satisfy Schoolfield, Hanauer and Company. I could not tell you exactly the hour. I had contemplated several times that I would have to make an assignment.

273 Q. And you were contemplating that before Mr. Miller got there that day?

A. No; I was not contemplating that at all then; I had my mind made up to pay the firm what I owed them.

Q. You were not contemplating it when he came?

A. No, sir.

Q. You just dismissed it from your mind for the time being?

A. I expect I paid him before the assignment.

Q. Was it after dark and after supper that you went with Mr. Miller to Mr. McClellan's office?

A. Yes, sir.

Q. And he then prepared this bill of sale of the stock of goods and other property to the firm?

A. He did.

Q. Why did you not have it executed that night?

A. I did not think it was necessary to do it at night.

Q. Was it not more reasonable to do it at night than at 5 o'clock in the morning?

A. We did not do it at 5 in the morning, but got up at about 6 o'clock. The reason we did that was because the train left there at 6 and we had to go to Elkmont.

Q. The reason that you did not sign the paper that night was because you wanted to wait until Monday morning?

A. Yes, sir.

Q. Was this deed of assignment for your creditors generally prepared on Saturday?

274 A. Yes, sir.

Q. Was it prepared before or after the paper to Miller?

A. After.

Q. The same night?

A. Yes; he wrote it out afterwards.

Q. Did you stay there and see him prepare this instrument?

A. No, sir.

Q. Then how do you know it was prepared that night?

A. Because it was handed to me afterwards.

Q. Did Mr. Miller hand it to you?

A. No, sir; he did not know that I had that paper.

Q. Was he there when you got the paper from Mr. McClellan?

A. No, sir; I expect he went uptown.

Q. Did he go off and leave you and Mr. McClellan there by yourselves?

A. Yes, sir.

Q. Were you there all the time he was there?

A. Yes, sir.

Q. How long were you there?

A. Until Mr. McClellan had written out the papers. I went there right after supper, I reckon.

Q. How long were you there with Mr. Miller?

A. Maybe an hour or an hour and a half. I think I left with Mr. Miller and returned again.

Q. Now, your recollection is that you went off with him

275 and went back again. Did you tell Mr. Miller you were going back?

A. I did not.

Q. Did he know that you were going back?

A. No, sir.

Q. What time of the day on Saturday was it that you first saw Mr. Miller?

A. About dinner time.

Q. How did he happen to come there?

A. I telegraphed him.

Q. Had he not been there several times before that?

A. Yes, sir.

Q. What for?

A. I suppose to look after business.

Q. What business?

A. I don't know. You ought to ask him that. The first time I saw him there was early in the fall, trying to make collections of me.

Q. How often did you see him there that fall?

A. I suppose I saw him there two or three times.

Q. What did you do for him?

A. Nothing. I might have treated him once in awhile.
Q. Did you pay him anything?
A. Yes, sir; I did pay him a little. He urged upon me some cotton and collections.
Q. Where is your book?
A. I have it here.
Q. You say you shipped him cotton?
A. I shipped him cotton all the season.
Q. Did you let him have any money?
276 A. No; not that I remember. I let him have cotton all the time.
Q. You say he was there two or three times before this. How long did he stay at a time?
A. At one time, I think, he stayed two or three days. I think he wanted to be there at a farmers' meeting. There was a piece published in the Nashville American, which I suppose Mr. Miller had seen, where a certain person there had written that the farmers were trying to make an appeal to the legislature to make a stay law. I suppose he stayed that time on that account. That was the only time he stayed longer than half a day, so far as I know.
Q. The last time he was there he stayed from Saturday till Monday?
A. I don't know. He might have stayed a month. I don't keep up with Mr. Miller.
Q. At one time he stayed two or three days on account of this special meeting of the farmers?
A. Yes, sir.
Q. You say you sent Mr. Miller the telegram, and that he came in response to that telegram?
A. Yes, sir.
Q. Have you a copy of that telegram?
A. Yes, sir.
Q. What did it say?
A. I sent him a telegram either on Thursday or Friday to be in Athens on Saturday; that I would like to see him.
277 Q. Was the telegram to him or to Schoolfield, Hanauer and Company?
A. It was sent to Schoolfield, Hanauer and Company.
Q. Did it say for him to come to Athens?
A. Yes, sir.
Q. Did you telegraph any of your other creditors?
A. I did not.
Q. You had contemplated making this assignment?
A. Yes, sir; I had contemplated that I would be forced to make an assignment.
Q. And you consulted Mr. McClellan about making a general assignment before you telegraphed?
A. I did.
Q. Why did you not telegraph to your other creditors? Why did you telegraph for Mr. Miller, of the firm of Schoolfield, Hanauer and Company, to come and not your other creditors?

A. Because under the laws of Alabama, according to my attorneys' directions, I had the right to prefer any creditors I wanted to, and I preferred to pay Schoolfield, Hanauer and Company what I owed.

Q. Did Schoolfield, Hanauer and Company send that letter by you to Bamberger, Bloom an- Company (handing witness the following letter)?

MEMPHIS, TENN., *Dec. 27th*, 1889.

Messr. Bamberger, Bloom and Company, Louisville, Ky.

278 DEAR SIRS: Our mutual friend and customer, Mr. Henry Warten, through, we believe, no fault of his own, but owing to disastrous failures of crops in his section, finds himself forced to ask for extension of his particular friends, and he recognizes you among that number and from whom he can ask that favor.

Having confidence in his honor and integrity and business qualifications, we have agreed to give him extension, provided you will do so. He informs us that one of his creditors has agreed to give him extension and he will only ask it of three houses, viz., yours, ourselves, and the party who has agreed to it.

Yours very truly,

THE SCHOOLFIELD-HANAUER CO.,
Per W. W. SCHOOLFIELD, *President.*

A. Yes, sir.

Plaintiffs offer this letter in evidence in connection with Warten's testimony.

Q. Did you ever see that letter before, Mr. Warten?
A. Yes, sir.
Q. Who wrote that letter?
A. Mr. W. W. Schoolfield.
Q. Is he a member of the firm of Schoolfield, Hanauer and Company?
A. He was.
Q. Was that letter handed to you?
A. I asked for it.
Q. Who did you ask for it?
A. Mr. Schoolfield.
279 Q. And he gave it to you at your request?
A. Yes, sir.
Q. What did you do with it?
A. I took it along with me to Louisville.
Q. Where was Mr. Schoolfield when he handed you this letter?
A. In his office, in Memphis, Tenn.
Q. What did you do with the letter?
A. I went into the office of Bamberger, Bloom and Company, at Louisville, Kentucky, and handed it to Mr. Bamberger, but before I produced this letter I had a conversation with Mr. Bamberger.
Q. At that time what was the amount of your indebtedness to Bamberger, Bloom and Company?
A. Between $6,000 and $7,000.

Q. Did they have any note or other evidence of debt?
A. Yes; they had one note for four thousand and odd dollars which they let go to protest on December 10th.
Q. And the balance was open account?
A. Yes, sir.
Q. Had you paid them anything on that account that year?
A. No, sir; not a cent.
Q. And when you showed them that letter you were indebted to them in the sum of $6,000 or $7,000 on a note past due?
A. Yes, sir.
Q. They gave you no extension?
A. They did not, to correspond with this letter
280 Q. Did you not take up a past-due note?
A. I did that after I was in Louisville three or four days; they forced me to do it.
Q. How did they force you to do it?
A. I remarked, "These people have agreed to give me an extension if you will," and I said that they ought to give me an extension, too. I stayed there all Sunday and Monday and begged and begged them to give me an extension for the fall.
Q. Did you not, in fact, sign these acceptances whilst you were there?
A. I did, on Monday, Dec. 30th.

Reads acceptance as follows: See page 5 (37) of this transcript.

Q. You signed one for $1,000, due Jan'y 15th, 1890, and one for 500, due each fifteen days thereafter, to the amount of $3,000, and the balance was to be paid in the fall and winter?
A. Yes, sir.
Q. You took up a note past due?
A. Yes, sir.
Q. These acceptances were to close up the account and a note that was past due?
A. No, sir; it did not close up my account; there was two hundred and some odd dollars that was not included in that.
Q. How did it happen?
A. They just left it out so they could make it out of me
281 afterwards; I expected he would give me an extension until next winter, but he left this $200 out.
Q. Have you ever paid them anything on that indebtedness?
A. No, sir.
Q. Have you ever been asked for the two hundred and odd dollars that was left out of the settlement?
A. No, sir.
Q. Don't you know, Mr. Warten, that that amount was left out of the settlement by mistake?
A. I do not. I think it was done by Mr. Goldsmith.
Q. Was he there then?
A. He was there all Saturday evening.
Q. When did you sign the acceptance?
A. On Monday.

A. Because under the laws of Alabama, according to my attorneys' directions, I had the right to prefer any creditors I wanted to, and I preferred to pay Schoolfield, Hanauer and Company what I owed.

Q. Did Schoolfield, Hanauer and Company send that letter by you to Bamberger, Bloom an- Company (handing witness the following letter)?

MEMPHIS, TENN., *Dec. 27th*, 1889.

Messr. Bamberger, Bloom and Company, Louisville, Ky.

278 DEAR SIRS: Our mutual friend and customer, Mr. Henry Warten, through, we believe, no fault of his own, but owing to disastrous failures of crops in his section, finds himself forced to ask for extension of his particular friends, and he recognizes you among that number and from whom he can ask that favor.

Having confidence in his honor and integrity and business qualifications, we have agreed to give him extension, provided you will do so. He informs us that one of his creditors has agreed to give him extension and he will only ask it of three houses, viz., yours, ourselves, and the party who has agreed to it.

Yours very truly,

THE SCHOOLFIELD-HANAUER CO.,
Per W. W. SCHOOLFIELD, *President.*

A. Yes, sir.

Plaintiffs offer this letter in evidence in connection with Warten's testimony.

Q. Did you ever see that letter before, Mr. Warten?
A. Yes, sir.
Q. Who wrote that letter?
A. Mr. W. W. Schoolfield.
Q. Is he a member of the firm of Schoolfield, Hanauer and Company?
A. He was.
Q. Was that letter handed to you?
A. I asked for it.
Q. Who did you ask for it?
A. Mr. Schoolfield.
279 Q. And he gave it to you at your request?
A. Yes, sir.
Q. What did you do with it?
A. I took it along with me to Louisville.
Q. Where was Mr. Schoolfield when he handed you this letter?
A. In his office, in Memphis, Tenn.
Q. What did you do with the letter?
A. I went into the office of Bamberger, Bloom and Company, at Louisville, Kentucky, and handed it to Mr. Bamberger, but before I produced this letter I had a conversation with Mr. Bamberger.
Q. At that time what was the amount of your indebtedness to Bamberger, Bloom and Company?
A. Between $6,000 and $7,000.

Q. Did they have any note or other evidence of debt?
A. Yes; they had one note for four thousand and odd dollars which they let go to protest on December 10th.
Q. And the balance was open account?
A. Yes, sir.
Q. Had you paid them anything on that account that year?
A. No, sir; not a cent.
Q. And when you showed them that letter you were indebted to them in the sum of $6,000 or $7,000 on a note past due?
A. Yes, sir.
Q. They gave you no extension?
A. They did not, to correspond with this letter.
280 Q. Did you not take up a past-due note?
A. I did that after I was in Louisville three or four days; they forced me to do it.
Q. How did they force you to do it?
A. I remarked, "These people have agreed to give me an extension if you will," and I said that they ought to give me an extension, too. I stayed there all Sunday and Monday and begged and begged them to give me an extension for the fall.
Q. Did you not, in fact, sign these acceptances whilst you were there?
A. I did, on Monday, Dec. 30th.

Reads acceptance as follows: See page 5 (37) of this transcript.

Q. You signed one for $1,000, due Jan'y 15th, 1890, and one for 500, due each fifteen days thereafter, to the amount of $3,000, and the balance was to be paid in the fall and winter?
A. Yes, sir.
Q. You took up a note past due?
A. Yes, sir.
Q. These acceptances were to close up the account and a note that was past due?
A. No, sir; it did not close up my account; there was two hundred and some odd dollars that was not included in that.
Q. How did it happen?
A. They just left it out so they could make it out of me
281 afterwards; I expected he would give me an extension until next winter, but he left this $200 out.
Q. Have you ever paid them anything on that indebtedness?
A. No, sir.
Q. Have you ever been asked for the two hundred and odd dollars that was left out of the settlement?
A. No, sir.
Q. Don't you know, Mr. Warten, that that amount was left out of the settlement by mistake?
A. I do not. I think it was done by Mr. Goldsmith.
Q. Was he there then?
A. He was there all Saturday evening.
Q. When did you sign the acceptance?
A. On Monday.

Q. Did you make the settlement with Mr. Goldsmith?
A. No, sir; I made it with Mr. Julius Bamberger.
Q. After you signed these acceptances, then you went back home?
A. Yes, sir.
Q. Did you ever inform Bamberger, Bloom and Company that the settlement, as you had made it with Bamberger, Bloom and Company, was not acceptable to Schoolfield, Hanauer and Company?
A. I did not.
Q. What amount of money did you have on hand at the time you made this settlement with Bamberger, Bloom & Company?
A. I did not have any at that time.
282 Q. What amount did you pay Schoolfield, Hanauer and Company—the firm and the corporation—between the 30th day of Dec., 1889, and the 13th day of January, 1890?
A. Not one dollar in money.
Q. How much cotton of yours did they sell or was sold and applied during that time to the payment of the debt you owed them?
A. I had drawn on that cotton more than the cotton amounted to. The cotton was sold probably two or three weeks later than I drew on it.
Q. These statements you had today and which you were examined about show correctly what you paid to Schoolfield, Hanauer and Company, and when?
A. Yes, sir. They had advanced me money on cotton I had sold them. I had drawn on them in favor of C. E. Frost nearly the whole season.
Q. I understood you to say that they were your bankers and that you were not required to attach a bill of lading every time to your drafts?
A. I was not, but I would notify them every night of the cotton I had shipped and how much I had drawn.
Q. How much did you owe them on December 30th?
A. I do not know.
Q. How much did you owe them when this letter was written, on Dec. 27th?
283 A. I suppose I owed the firm and the corporation about $20,000.
Q. Those advances from them constitute the debt of $20,000?
A. Yes, sir; on January 20th, 1889, I owed the firm $17,000, about. I owed the corporation when I went on to Louisville between $3,000 and $4,000. As I shipped these people cotton I would draw on it sometimes more and sometimes less, but it would always be several weeks afterwards. According to my books I owed them about $15,000, and they had bales of cotton which amounted to about $12,000. I would consider myself due the corporation only $3,000.
Q. So you say that on December 30th you were owing the firm and the corporation about $20,000?
A. Yes, sir.
Q. You did not deal with the firm after the 1st of April, 1889?
A. I did.

Q. How?

A. They discounted a note for me.

Q. Where is that note? (Witness produces note for $2,500. See page 41 (146) of this transcript.)

A. Here it is.

Q. This note was drawn by you in favor of Schoolfield, Hanauer and Company. It is endorsed by the corporation, is it not?

A. Yes.

Q. I will get you to state if the proceeds of that note do not appear in the payment of your indebtedness to the corporation which was furnished by the corporation to you?

284 A. Yes, sir; I wrote to Schoolfield, Hanauer and Company, "Enclosed find note for $2,500, which please have discounted for me, and on which I will draw." They placed the net proceeds on credit for me and I drew on it. It went on my account with the corporation.

Q. And that is included in your indebtedness to the firm of Schoolfield, Hanauer and Company?

A. No, sir; it is not.

Q. It is not?

A. Oh, yes; that $2,500 note is.

Q. Was that the only transaction you had with Schoolfield, Hanauer and Company after the 1st of April?

A. Yes, sir.

Q. Now, without reference to any credits at all, what was your indebtedness to the corporation after you commenced dealings with them, the 1st of April, 1889?

A. My dealings from April 3rd, 1889, up to January 9th, 1890, with the corporation, the merchandise and cash accounts, was $37,804.52.

Q. How much of that did you pay them?

A. All except $3,882.53.

Q. What proportion of Bamberger, Bloom and Company's claim did you pay to them during that time?

A. This is a cash account. Bamberger, Bloom and Company did not give me any cash.

285 Q. Who was the other creditor referred to in that letter of the Schoolfield-Hanauer Company to Bamberger, Bloom and Company?

A. Hess, Henle and Company, of Louisville, Ky.

Q. What was your indebtedness to Hess, Henle and Company at that time?

A. $2,400 and something, and on January 4th they took up a note for me for about $500, which made $2,900 and something.

Q. Then at the time that that letter was written you were in fact owing that firm $2,400?

A. Yes, sir.

Q. That letter had reference to the three firms of Hess, Henle & Co., Schoolfield, Hanauer & Co., and Bamberger, Bloom & Co.?

A. Yes.

Q. Did you go to Louisville to see Hess, Henle & Company?

A. Yes, sir.
Q. Did you see them?
A. Yes, sir.
Q. Did you have a similar letter to them?
A. I did not. They had promised me they would stick to me and wouldn't let me drop.
Q. Then you had their assurance of that?
A. No; I was confident of it.
Q. It was before you went that you had got this assurance?
A. They had told me all the winter that I need not be scared. They were intimate friends of mine; the same as Schoolfield,
286 Hanauer and Company. I knew they would do all they could for me.
Q. Did not you go to Nashville from Memphis?
A. I did not.
Q. Did you stop at Nashville on your way to Louisville?
A. I might have done so; I don't know.
Q. Who did you see at Nashville when you were on your way to Louisville?
A. I don't remember; several people, I suppose.
Q. Did you see any of your creditors there?
A. I don't think I did.
Q. You say you remained in Louisville for several days?
A. From Saturday evening at 12 o'clock until Monday at 12.
Q. Did you go to Memphis?
A. No; I came from there.
Q. Where did you go?
A. To Athens.
Q. When did you go to Memphis?
A. I went there on Christmas day, I think—on Wednesday.
Q. That was five days before this transaction?
A. I beg leave to differ with you. I was in Louisville on the 28th.
Q. It was on Monday, the 30th, that you signed these acceptances?
A. Yes, sir.
Q. When were you in Memphis after that?
A. The latter part of May.
Q. Not until then?
A. No, sir.
287 Q. When did you see Mr. Miller, of the firm of Schoolfield, Hanauer and Company?
A. On January 11th—Saturday.
Q. Didn't you see him before that?
A. I did.
Q. When?
A. I saw him when I returned from Louisville.
Q. Where?
A. At Athens.
Q. What day was that?
A. Tuesday morning, December 31st.

Q. Did you have any conversation with him?

A. I had a conversation on various matters with him.

Q. In reference to your creditors?

A. I did not. I just told him that Bamberger, Bloom and Company did not comply with their request, and he asked me what I had done, and I told him, "I am on my own hook now, my own responsibility. In order to stand the racket they made me sign $3,000 paper." I told him they had refused me an extension.

Q. And what you had done?

A. I did not tell him exactly the amount I had agreed to pay them.

Q. Did you not say that?

A. I telegraphed that.

Q. When?

A. On Saturday evening.

Q. Where from?

A. Louisville. I telegraphed about like this: "Parties want three thousand dollars; what must I do? Answer care Hess, Henle and Company. Henry Warten."

Q. What did they reply to that?

288 A. "We will not advance any money; we are surprised at their asking it."

Q. Have you got that telegram?

A. Yes, sir; Judge Brickel has the answer to it. (Reads:)

"LOUISVILLE, KY., 12, 28, 1889.

To Schoolfield-Hanauer Co., 256 Front St., Memphis:

They want three thousand dollars, nothing less. What shall I do? Answer quick, care Hess, Helne and Company.

HENRY WARTEN."

Q. And you told Mr. Miller that they had required you to pay $3,000?

A. Yes, sir; and he asked how I was going to get it, and I told him I would try to make an effort to raise it from the Elkmont store.

Q. Did you show your telegram and the answer to Bamberger, Bloom and Company?

A. I did not; I stayed there until Monday, still thinking that I could arrange it.

Q. Did you communicate to Bamberger, Bloom and Company your conversation with Mr. Miller there at Athens and the result of it?

A. I did not.

Q. Did you ever communicate, either by word of mouth or by letter or otherwise, to Bamberger, Bloom and Company, after you left Louisville, that the settlement you made with them was not acceptable to Schoolfield, Hanauer & Co.?

A. I did not.

289 Q. In whose handwriting is this letter to Bamberger, Bloom and Company (handing witness following letter)?

"ATHENS, ALA., 12, 12, 1889.

"Mess. Bamberger, Bloom and Company, Louisville, Ky.

"GENTLEMEN: Yours of yesterday received. I regret that I cannot comply with your wish. If I could have done so I certainly would have sent it to you. Regret that you cannot accommodate a customer like Henry Warten.

"Y'rs truly, HENRY WARTEN.

"Will try and pay you every cent before Jan. 15th."

A. Mine.
Q. Was it written on the day it bears date?
A. It was.

Plaintiffs offer this letter in evidence.
Plaintiffs offer in evidence the following letter:

"ATHENS, ALA., *Decb. 7th*, 1889.

"Mess. Bamberger, Bloom & Co., Louisville.

"GENTLEMEN: I have to ask a favor which I hope you will grant. I am due you a note of $4,719.36 on the 15th, which please let me renew for 60 or 90 days.

"Our county has made about one-fourth of a crop, &, as it
290 is generally the case where a cotton crop is short, it makes the farmers hold their cotton for unreasonable prices. I have now men out offering ½ to 1c. p'r pound bonus, & I think I will be able to collect in the next 2 months from 15 to 20 thousand dollars and maybe more. I have now over fifty thousand dollars standing out, and have only collected so far about $13,000.00. As this is the first time I ever have asked you to renew a note for me, I do hope that you will grant it. I assure you that my actions towards you in the future will show my appreciation, & you shall enjoy the bulk of my business hereafter.

"Yours truly, HENRY WARTEN."

Q. Look at this letter and see whose handwriting it is in.
A. Mine, sir.
Q. Was it written on the day it bears date?
A. It was, sir.

Plaintiffs offer in evidence the following letter:

"ATHENS, ALA., 11, 15, 1889.

"Mess. Bamberger, Bloom & Co., Louisville, Ky.

"GENTLEMEN: Your favor of 13th inst. received. I am now meeting a good many obligations; collections are slow & bad, & — kindly ask you to wait a little while.

"Y'rs respf., HENRY WARTEN."

291 Q. Is this letter in your handwriting?
A. Yes, sir.
Q. Was it written on the day it bears date?
A. Yes, sir.

Q. Where did you get the statement of your indebtedness paid by you?

A. From the books.

Q. From these turned over by you to the assignee under the general assignment?

A. Yes, sir.

Q. Do they show your indebtedness?

A. They do.

Q. In that letter which you carried from Schoolfield, Hanauer & Company to Bamberger, Bloom and Company it is stated that there is one other creditor besides themselves and Bamberger, Bloom & Co. that you desire to get an extension from. Who was that?

A. Hess, Henle and Company.

Q. How much were you owing them at that time?

A. Between $2,000 and $3,000.

Q. And they and Bamberger, Bloom & Company and the firm and corporation of Schoolfield, Hanauer and Company were the creditors you desired to get extension from?

A. Yes, sir.

Q. Have you paid Hess, Henle and Company what you owed them at that time?

292 A. I have.

Q. When?

A. January 8th or 9th, 1890.

Q. How did you pay them?

A. With claims, accounts, and notes.

Q. What claims, accounts, and notes did you transfer to them in payment of that debt?

A. The books will show that.

Q. Do the books show all of the claims you transferred to them?

A. They do.

Q. I will get you some time to write out a list of the claims and amounts.

A. I will.

Q. They are not on the list of the general assignment?

A. No.

Q. I see one amount here, "Hess, Henle & Company, $2,961.88." When did you pay that?

A. I paid it on January 8th or 9th.

Q. Then it was $2,900 *dollars* and not $2,400 that you paid them?

A. Well, they took up a note for me on January 4th for about $500.

Q. Where was that note due?

A. At Louisville.

Q. To whom was it due?

A. Hess, Henle and Company, a note which they had discounted.

Q. When was it given?

A. I will have to take my books on that.

Q. You paid them this amount, $2,961.88, on the 8th or 9th of January?

A. I did.

293 Q. I see above here $1,050, $1,086, $857; aggregate, $2,993. When did you pay that?

A. When the notes fell due—one on November 5th, of $1,050, and one December 5th, of $1,086, and the other on December 22, of $857.

Q. Did you pay that in money?

A. I did.

Q. Where did you get the money?

A. Out of my business.

Q. Hess, Henle and Company? In what business were they then?

A. They are engaged in the gents' furnishing goods and notions trade.

Q. What amount of this indebtedness was for merchandise bought by you from them?

A. These three notes are for cash and notes which they discounted for me. There might be some of it for merchandise. I owed them last fall between $1,300 and $1,400, for which I issued them my notes. Last spring they discounted a three thousand and odd dollars note for me. Last fall I owed them these three notes, and my merchandise book will show to whom money was paid.

Q. How much of this indebtedness was for merchandise bought by you of them?

A. I owed them $1,357 in the spring, and I bought about $1,300 worth last fall. Deduct these two amounts from what I paid them and the balance was cash.

Q. Then about one-half was for merchandise and the balance for cash?

294 A. Yes, sir.

Q. This $2,961.88 which you paid on January 8th or 9th, what was that for?

A. Merchandise and one or two notes which they had taken up in January and December for me. There was one note of $900 and one for $500, and the balance was merchandise.

Q. How much of this indebtedness which you say you paid off was paid in money and how much in the transfer of claims?

A. I paid nearly $3,000 in money.

Q. I am speaking of this entire list.

A. Twenty-odd thousand dollars. I think between 25 and 30 thousand dollars.

Q. You paid that in money?

A. Yes, sir.

Q. Within what period of time?

A. Between September 1st and January 13th, 1890.

Q. The entire indebtedness aggregates $57,184.81?

A. No, sir; it does not. That is the amount I paid out, including cash and my stock of goods and other property. That is the entire amount of indebtedness paid; not the entire amount of my indebtedness. I owed several thousand dollars besides that.

Q. Outside of this indebtedness you owed Bamberger, Bloom & Co. between $6,000 and $7,000?

A. I owed more than that.
Q. How much?
A. About $7,000.
295 Q. I will get you to make a list of that.
A. I have one.
Q. Have you the notes you paid Hess, Henle and Company?
A. Yes, sir.

Plaintiffs offer these notes in evidence; not handed to the stenographer.

Q. This list of your liabilities, outside of what you paid off, includes the indebtedness to the Louisville Banking Co. of $2,000. Was that secured?
A. It was.
Q. When was — furnished *it* to the banking company?
A. The latter part of November or the beginning of December.
Q. What securities do you refer to?
A. I owed them $7,000, one note of $3,000, due November 1st, 1889, and one note for $4,000, due December 1st, 1889. On November 3 or 4 I paid that $3,000 note. In the latter part of November I wrote to them that on account of the short crop I would appreciate it if they would let me pay them $2,000 of the $4,000 in cash and let me give them a renewal note for the other $2,000. They at first refused that, and I wrote them again a very pitiful letter asking them to let me pay $2,000 in cash and renew a note for $2,000 for sixty days. When I gave them the notes for the $7,000 I had raised collaterals—about $15,000 worth of mortgages and
296 debts and about 150 shares of Decatur stock. I wrote to them in November and said: "Gentlemen, if you will allow me to renew the note for $2,000 you might retain the mortgage deeds as security. Please return to me the Decatur stock." They wrote back to me that they would prefer to retain the Decatur stock as collateral, as the mortgage deeds would be of more use to me than to them.
Q. Have you got that letter?
A. Yes, sir.
Q. I just want to find out if this $2,000 was not secured by securities you furnished them when you got the money from them.
A. Yes, sir.
Q. Was there any of this other liability of yours mentioned in this paper secured?
A. Yes, sir.
Q. Who is that?
A. L. Bretzfelder and Company.
Q. What is the amount of that?
A. $986.17.
Q. When did you secure them that?
A. A day or two before I went under. I sent them claims to cover this amount.
Q. When?
A. On the 9th or 10th of January.

Q. Did you pay them the money?
A. I did not.
Q. What claims did you transfer them?
A. Various claims specified in my book.
Q. What did they amount to?
297 A. They lacked about 60 or 70 cents in the whole. I had sent them notes and accounts. I owed about 60 cents more than the claims amounted to. I wrote them that and said if they wished to send me a receipt in full they could do so. They did not do that and there was a lawsuit about it afterwards, and they lost the suit and the property went back to the assignee.
Q. Well, the effect of it was that they had no security?
A. I thought that they had, but they lost it.
Q. At the time you made this transaction with Miller and when you made this assignment had any suits been brought against you by any of your creditors?
A. No, sir.
Q. Had Bamberger, Bloom and Company threatened to institute suit against you?
A. No, sir.
Q. When you got back from Louisville to Athens was Mr. Miller there?
A. He was.
Q. Was he there by prearrangement with you?
A. He was not.
Q. Had you written him to come there?
A. No, sir. I wired to him on Saturday evening from Louisville, "Parties want three thousand dollars. What shall I do? Answer quick, care of Hess, Henle & Company." I made my head-
298 quarters there. I got an answer saying, "We will not advance any money. We are surprised at their asking it." I received that message pretty late Saturday evening.
Q. You stayed in Louisville until Monday at 12 o'clock?
A. Yes, sir.
Q. And you left and got back on Monday night and on Tuesday found Mr. Miller there?
A. Yes, sir.
Q. And you had the conversation with him you spoke of?
A. Yes, sir; I told him they would not give me more than one-half.
Q. You were asked in reference to the extent of your business and the character of your customers. Did any other merchants of Athens fail that season except yourself?
A. Yes, sir.
Q. What was it?
A. That was the Crenshaw Hardware Co.
Q. Were they sued?
A. I don't know.
Q. Did they make an assignment?
A. They did not. They sold out to one of their creditors.
Q. Did they leave other creditors unpaid?

A. Yes, sir.

Q. What firm in Athens in the business you were in failed that season?

A. That is all.

Q. Do you know what proportion of the indebtedness of
299 these other mercantile firms engaged in the same character of business you were in was collected by them?

A. I do not.

Q. How much was the face value of your assets, taking the goods at their invoice price and the debts due you at their face value, in excess of your liabilities?

A. A good many thousand dollars; between $35,000 and $45,000.

Q. The customers that you had, as a general rule, were as good as any merchant had in that town?

A. I had them better. I considered them better; but I had a store at Elkmont which was really my ruin.

Q. How much money do your books show you got from your Elkmont store in the fall and winter of 1889?

A. I could not tell unless I see the books. I should say about $5,000.

Q. How much cotton did you get from there?

A. I don't remember. I should say about 210 bales.

Q. What was their value?

A. I suppose between $9,000 and 10,000.

Q. How much money did you put up there that year?

A. Several thousand dollars to buy cotton with. I don't remember exactly.

Q. Do you mean $3,000 or what?

A. More than that.

300 Q. $4,000?

A. (Refers to books.) Money got from the Elkmont store, 210 bales of cotton, making $9,581.99. I sent up there $4,892. I received $4,689.72.

Q. And you got 210 bales of cotton, amounting to $9,581.99?

A. Yes, sir.

Q. Is the account of the Elkmont store correctly set out here on the books?

A. Yes, sir.

Q. What does this account show here as a debit?

A. $15,466.84.

Q. When was that indebtedness created?

A. I commenced there in August, 1886.

Q. That $15,000 of indebtedness, what does that represent?

A. It runs through a number of years; ever since 1886.

Q. What was the state of the Elkmont store account on the 1st day of January, 1889?

A. It owed me $18,308.09.

Q. You had lost, then, at the Elkmont store in your transactions from 1886 to 1889 $18,308.09?

A. No, sir; here is the credits of cotton to come off.

Q. I want to know what was the condition of the account of the

Elkmont store on January 1st, 1889, with reference to its assets and liabilities.

A. About $11,000.

Q. You had lost up to that time at the store $11,000?

301 A. I did not say that. You asked me how much I had outstanding at that time.

Q. I asked you how the account stood—whether you made money or lost it.

A. I lost money.

Q. How much had you lost, according to this statement?

A. This statement shows only the account I had against the Elkmont store just as against a customer.

Q. Did you turn over to the assignee all of your books?

A. Yes, sir; all of them; everything.

Q. This amount that you stated awhile ago as the liabilities of the Elkmont store, that was what the store owed you?

A. Yes, sir.

Q. Did it not have certain assets?

A. It did.

Q. Did it not have a stock of goods and accounts?

A. It did.

Q. Did it not have real estate?

A. No, sir.

Q. Did it not have that cotton? If you charged the Elkmont store with the cash you advanced, is it not entitled to a credit for the 210 bales of cotton?

A. Why, certainly, sir.

Q. And, in addition to that, they are entitled to a credit for the value of the goods and accounts?

A. Yes, sir.

Q. How much did those goods amount to?

302 A. My agent turned over, either the latter part of December or the early part of January, a few notes and accounts.

Q. How many?

A. The books will show. I run my account with the Elkmont store just the same as with a purchaser.

Q. That is the way you were ruined?

A. Not exactly on account of the house, but I was robbed up there last winter and the whole year.

Q. Who robbed you?

A. My agent, John W. Strain.

Q. How much did he rob you of?

A. What I mean by robbing he made false statements to me of several thousand dollars the whole year.

Q. Have you sued him for it?

A. I couldn't, because my hands are tied up.

Q. You are waiting until your hands are untied?

A. I am.

Q. When were your hands tied?

A. When I turned over everything in January to the assignee. Henry Warten is dead in business.

Q. Have you been advised by attorney that you could not prosecute that agent for embezzlement?

A. I didn't say that; I said false statements.

Q. You directed the preparation of the list of liabilities due to you, which you turned over to the assignee?

303 A. I did.

Q. Did you put anything in there against Strain?

A. I did.

Q. What was it?

A. His account which he owed the store.

Q. What was the amount of that?

A. I suppose about $1,800 or $1,600.

Q. Is that the amount he owed you?

A. Yes, sir; that is the account he charged himself with—merchandise and cash he has taken ever since I commenced business in 1886.

Q. What did you state in your examination-in-chief was the value of that storehouse at Elkmont when you had this transaction with Schoolfield, Hanauer & Company?

A. $500.

Q. Did you state it was worth that?

A. No; it is not worth $500.

Q. How much is it worth?

A. It would not bring over $400 or $450.

Q. Was that house and lot at Elkmont Springs worth at that time $250?

A. It was not.

Q. What was it worth?

A. About $200, I suppose.

Q. Was that property near Birmingham at that time worth $500?

A. It was not.

Q. What was it worth at that time?

A. I suppose between $300 and $400.

Q. $350?

A. I suppose so.

304 Q. Was all that real estate that you let them have worth any more when they sold it to your wife than when you sold it to them?

A. It was not.

Q. Did you advise your wife to pay them $1,250 in cash for that real estate?

A. I did.

Q. Then it was worth $950, and you advised her to pay them $1,250 for it?

A. That was because they would not sell the other property, unless she took the real estate also.

Q. Did they sell the other property at less than its face value to her?

A. I suppose so—a little.

Q. What proportion of the property did they sell to her for less than its face value?

A. About $3,000 worth of notes and accounts for $1,572.
Q. What was the value of those at that time?
A. I think she will be able to realize about $2,800 or $2,900.
Q. What other property did they sell to her at less than value?
A. $1,700 worth of accounts for $1,227.
Q. What was the value of those accounts at that time?
A. I think she will be able to realize every dollar of it. They sold $1,750 worth. They were worth that by my attending
305 to them the whole year—by paying strict attention to them.
Q. What accounts do you mean by the $1,750?
A. Goods which were sold mostly to merchants while they had charge of the store—until June—and to a few other people.
Q. That was for goods sold on credit by Schoolfield, Hanauer and Company while they were carrying on that business?
A. Yes, sir. They sold these goods to these parties on credit. Parties had purchased to be paid, maybe, in 10 or 15 days.
Q. What is the aggregate amount sold?
A. $1,729.83.
Q. On what time was it sold?
A. Some of it for 10, 20, and 30 days and some of it for a year.
Q. What amount of it was sold for a year?
A. They sold to Hill & Legg $728.88 worth.
Q. Was that the Major Legg that was here the other day?
A. Yes, sir. Hill and Legg are merchants at Athens.
Q. When were they to pay the $728.88?
A. Mr. Miller said to give them to December or January.
Q. You gave them until January?
A. He told me to sell it out to them.
Q. Of course I understand that you did nothing in this matter without the express direction of Mr. Miller?
306 A. I did not.
Q. That $1,700 worth of accounts your wife got for $1,227.43. Now, there was another batch of accounts. What was that—how much?
A. I think about $3,000 worth.
Q. What were they?
A. The accounts and notes which the corporation owned.
Q. What did you value them at?
A. I could not tell. I was in hopes I could get the most of it.
Q. What did you pay for them?
A. $1,572.
Q. About one-half of what they were worth?
A. I don't suppose Mr. Miller could have sold them to anybody at half price.
Q. What did you give for them?
A. I gave $750 in cash and the balance in two notes.
Q. There was another batch of notes. What were they?
A. The accounts they got from me. They were the note on Chas. R. Getty for $1,400 and something, and a note on John W. Hill for $356, and a note on Sam. Donevent for $13 and something. They amounted to $1,770 and something.

Q. What did you pay for them?

A. I bought them with the stock of goods for about $3,500.

307 Q. You valued the stock of goods at from $2,500 to 3,000, and the other $500 was for the accounts?

A. Yes, sir.

Q. How was that $3,500 paid?

A. In notes.

Q. Who gave the notes?

A. My wife.

Q. There was no cash at all?

A. No, sir.

Q. How did you estimate the stock?

A. I had been in the business since 1873. I looked over the stock and I thought there was not over $2,500, maybe $3,000, worth of goods in the house.

Q. The goods from the Elkmont store were removed there, were they not?

A. Yes, sir.

Q. When?

A. I don't know; before I was in Miller's employ.

Q. How long were you away from the store?

A. I suppose about a month. I engaged myself either on February 3rd or 4th.

Q. That was not a month, was it?

A. Nearly a month.

Q. You were there working for the assignee part of the time?

A. Yes, sir.

Q. The Elkmont stock of goods were removed there between the 13th day of January and the 3rd or 4th of February?

A. I think they were removed about the latter part of January.

Q. Anyway, the Elkmont stock was put there with the Athens stock?

308 A. Yes, sir.

Q. What was the valuation of the Elkmont stock of goods?

A. There was 20% taken off. I sold them to Mr. Miller for $2,087. I did not take that invoice; it was taken by Mr. Strain; it was taken wrong; it was invoiced at over $2,500.

Q. What was the Athens stock of goods invoiced at?

A. At ninety-nine hundred and some odd dollars.

Q. What amount of new goods were put in that Athens store while Schoolfield, Hanauer and Company were running it?

A. I know to my certain recollection about $1,200; and Mr. Walter Miller bought a few goods; I don't remember how much.

Q. You bought $1,200 worth. Didn't he buy several hundred dollars' worth?

A. I suppose $200 or 300 worth.

Q. Then there went into the store upwards of $1,200 worth of goods to replenish the stock; you bought $1,200 worth?

A. Yes, sir; I did nothing but buy. They were directed to Miller.

Q. The goods that Walter Miller bought amounted to how much?

A. I could not tell exactly; $200 or $300.

Q. How much was sold out of that store?

A. I don't know.

Q. Have you never been told how much was sold?

309 A. I heard Walter Miller speak of it.

Q. What did he say?

A. About $6,000 worth.

Q. That was during the time that Schoolfield, Hanauer and Company had it?

A. Yes, sir.

Q. Did that include the cash as well as the credit?

A. I don't know whether it included it all or not. He told me that he had sold about $6,000 worth up to June.

Q. Take that as the aggregate of the sales; what balance would that leave, valuing the Athens stock at the invoice price and the Elkmont stock at the invoice price and the indebtedness due to Schoolfield, Hanauer & Company at its face value, and also the storehouse?

A. I know what was there on hand when my wife bought it. I should say there was not over $2,500 or $3,000 worth of goods. They sold the bulk of the goods out at a great loss.

Q. State what amount of goods that would be, putting the Athens goods at the invoice price. What was the invoice of the Athens goods?

A. 9,900 and some odd dollars.

Q. You sold some goods out of it?

A. Yes, sir.

Q. So that at the time of the transaction there was about

310 $9,500 worth of goods there?

A. Yes, sir.

Q. What was the Elkmont stock invoiced at?

A. I think about 2,500 and some odd dollars. I sold it out for $2,086.

Q. What were the sales?

A. Walter Miller said he had sold about $6,000 worth.

Q. Adding together the invoice prices of the Athens stock and the Elkmont stock and the amount of goods you bought and putting the amount Walter Miller bought at $400, how much does it make?

A. $13,186.

Q. Deduct that $6,000 sales from the $13,186—what does it leave?

A. $7,186.

Q. The $3,500 your wife gave her notes for included the balance of that and also the Getty and Hill matter?

A. It did not.

Q. Are you certain about that?

A. They sold out from January 13th up to June at a great loss—that is, a good many of the goods. After they engaged me I sold

to Hill & Legg about $1,700 worth. It cost over $1,400. It was old stock and had been there for several years.

Q. How much did they lose on the stock while they had the store?

A. I do not know.

311 Q. You say this property was sold at a great sacrifice during the time it was in the possession of Schoolfield, Hanauer and Company?

A. Yes, sir; it was sold out at less than inventory price.

Q. You spoke of goods sold to Legg & Hill. What was the invoice price of those goods?

A. I don't remember the price exactly. Some goods I sold there at 50 cents which were only worth that; some they only paid 60 cents and some only 25 cents for.

Q. On the invoice price?

A. Yes, sir; goods which had been there since 1881—hardware and various other old stuff—which were worth but very little, and what I did sell the goods for at that time was what it was worth then, the only benefit the house getting was that they need not to pay for it until the last of the year.

Q. You say you sold them at a great sacrifice on credit for 12 months?

A. No; I sold them at present value at that time.

Q. That was a transaction you made for Schoolfield, Hanauer & Company?

A. Yes; after they had employed me Mr. Miller told me that I should make all efforts to sell the stock as fast as I could. I then went to Mr. Hill.

Q. What Miller was it?

A. Mr. Walter Miller.

312 Q. Did you show him the statement of the goods and the invoice?

A. He was present when I told Mr. Hill the original cost and what I was selling them at. In the Elkmont store I charged all the time from 10 to 15 per cent. profit and then in January took up some staple goods for $200 or $300, which cost $125 or $150.

Q. Who did that?

A. Mr. Strain.

Q. Did not Mr. Vaughan offer you $3,000 for that stock of goods and the accounts in December?

A. He offered me that in January, either on the 3rd or 4th. Mr. Strain came down first. He came down and asked me if there was any encumbrance on my house and stock of goods at Elkmont. I said, No. He asked what I would take for the stock of goods—the house and the entire stock of notes, mortgages, and accounts. He offered me $3,000 for the stock of goods, storehouse, and between $15,000 and $20,000 worth of accounts and notes—the entire contents of the books.

Q. Did the books show $15,000 or $20,000 worth of accounts and notes due you?

A. They did.

Q. And that was in the early part of January?
A. Yes, sir.
Q. Do you know what he valued the stock of goods at?
A. He told me he would not give over $1,200 for the stock of goods.
Q. And he valued the accounts at how much?
313 A. I don't know what he valued the accounts or storehouse at. I don't know what he valued the real estate at. I refused to take it.
Q. Those mules and horses that you let Schoolfield, Hanauer and Company have—where did you get them?
A. I bought them from December up to January 11th.
Q. What did they cost you?
A. I could not tell you that.
Q. Can't you tell by looking at your books?
A. Not all of them. I don't know what the Elkmont stock cost.
Q. Your books will show in reference to those at the Athens house?
A. Yes, sir.
Q. Look at this statement I hand you and see if this is not a statement of it as shown by the books. Are the items you have gone over correct?
A. No, sir.
Q. I will get you to make out a statement from the books and hand it to me.
A. All right, sir.
Q. These statements that you were examined about, of your account with Schoolfield-Hanauer Company—I believe you stated that they were sent to you by the firm and the corporation?
A. Yes, sir.
Q. Are they correct?
A. Yes, sir.
314 Q. I will get you to look at that statement of the corporation. What month is that statement from?
A. November 5th, 1889.
Q. Does that statement of the account show that you owe them that $2,500?
A. It does.
Q. Look at this statement of Dec. 14, 1889, of the corporation. Does that show that you owe them that note of $2,500?
A. It does; it is just a memorandum.
Q. Is not that in the same handwriting as the rest of the account?
A. I don't know; it looks like it. It is in pencil.
Q. This statement of Nov. 5th has the charge in ink?
A. Yes.
Q. Look at the next statement of Jan. 9th and say if that item of the $2,500 note is there or not.
A. It is not.
Q. Why was it not on the last account?
A. Because the last account they put the whole four notes in one bill. The reason this note was put down was it was just a memo-

randum that I owed them that besides. The balance is only $6,420. The statement of November shows that I owed the firm $6,423.64—$8,933.05, including that note. In the month of Dec. they did not bring down the balance which I owed and made the memorandum of the $2,500 note.

315 Q. I just wanted to know why it was that was put down as a liability to the corporation.

A. Because I never had paid that note.

Q. And on the next statement, January 9th, it is not on that at all.

A. Because it is on the statement of the others.

Q. Mr. Warten, this account of the corporation, of date November 5th, 1889, has an item on the debit side of date "Sept. 19, our acceptance, Nov. 15th, 1889, $2,321.40." Did they accept your draft for that amount?

A. They did, in favor of Friedman Brothers, Memphis, Tenn. I wrote them in August to get them to take my acceptance for 60 days.

Q. Did you send any cotton on Sept. 19th to cover that?

A. I did not.

Q. Then the corporation accepted your draft of Sept. 19th without any cotton being sent to cover it, and you used that money in paying Friedman Bros. in Memphis?

A. Yes, sir.

Q. Did Friedman Brothers demand it?

A. I wrote to them and asked them if they would give me 30 or 60 days. They wrote that they would accept an acceptance on Schoolfield, Hanauer & Co. I sent this acceptance to pay th amount.

316 Q. Schoolfield, Hanauer & Company gave you their acceptance for the draft?

A. They did not. I sent it to Friedman Brothers and they took it to Schoolfield, Hanauer & Company and they accepted it.

Q. Mr. McClellan asked you in your examination-in-chief something about your financial condition at the time of these transactions between the firm and the corporation and yourself. Did you not reserve $1,000 of property?

A. Do you mean in exemptions?

Q. Did you get that $895.75 cash?

A. Yes, sir.

Q. Is that all the cash you had on hand at that time?

A. It was.

Q. Your books of accounts that you have before you there show your personal account with your business there, do they not?

A. They do, sir.

317 Q. I will get you to state what your personal accounts was for the year 1888.

Claimants object to this question because it is illegal and irrelevant. Objection sustained by the court, and plaintiffs *accept*.

Q. How many bales of cotton does this cotton book (handing wit-

ness cotton book) show that you got from your business in the fall of 1889?

A. 1,772.

Q. Does that cotton book show what number of those you got at the Elkmont store?

A. It does. That is included in this amount.

Q. How much is it?

A. 210 bales.

Q. And at the Athens store?

A. 1,562 bales.

Q. All of that cotton was shipped to the Schoolfield-Hanauer Company?

A. It was not.

Q. Where was it shipped?

A. I shipped 506 bales to the Columbia cotton mills at Columbia, Tenn.; 595 bales to M. H. Gunover, Louisville, Kentucky; 6 bales to J. T. Fargason and Company, Memphis, Tenn., and 665 bales to Schoolfield-Hanauer Company.

Q. What did you get from the sale of all that cotton?

A. Most all of the—in fact, all of it that I purchased for
318 the Columbia cotton mills and M. H. Gunover was for cash.

Q. You bought on commission for other people?

A. Yes, sir.

Q. Did you not ship the bulk of the cotton you got from your customers to Schoolfield-Hanauer Company?

A. No, sir; I shipped 665 bales to the Schoolfield-Hanauer Company.

Q. You say that the difference between the 665 bales and the 1,772 bales you got from your customers?

A. No, sir.

Q. How much did you get from your customers?

A. I suppose $15,000 or $16,000.

Q. What did the 665 bales of cotton you shipped to the Schoolfield-Hanauer Company come to? Approximate it.

A. The average was between $40 and $45 a bale.

Q. If it was $40 a bale, 600 bales would be $24,000?

A. Yes, sir.

Q. Then you let the Schoolfield-Hanauer Company have $24,000?

A. I did not.

Q. Did they not get that much cotton from you?

A. They did, but I did not pay that much on the cost. Before we had a bank in Athens I would telegraph to Memphis to
319 Schoolfield, Hanauer and Company for the money, and since they had a bank last winter I would get it from the cashier.

Q. Did they not get the proceeds of that cotton?

A. Why, certainly.

Q. When did you commence business for the assignee under that general assignment?

A. I think he engaged me about three days after I made the assignment.

Q. What did he agree to pay you?

A. $6 a day.
Q. How many days were you in his employ?
A. I think it was either thirty or thirty-two days.
Q. Were you employed continuously every day during that time?
A. Yes, sir.
Q. Where was his office?
A. It was at the house of Schoolfield, Hanauer and Company.
Q. In the same house you had done business in?
A. Yes, sir.
Q. What did you do for him?
A. At first I went over all the books and drew down balances to find out what balances each man owed. Then I would make out a balance-sheet of what each man owed the house of Henry Warten.
320 Q. And you were in the employ of the assignee from the 16th of January to the 16th of February?
A. Yes, sir.
Q. Were you in his employ after *after* that time?
A. No, sir.
Q. When did Mr. McGavock resign as assignee?
A. I do not remember. I think he resigned in March or April.
Q. Have you been paid by the trustee or the assignee?
A. Yes.
Q. And he paid you at the rate of $6 per day?
A. Yes, sir.
Q. When did you go into the employ of Schoolfield, Hanauer and Company there?
A. I think it was February 3rd or 4th.
Q. What did they agree to give you?
A. $100 a month for four months.
Q. Did they pay you?
A. Yes, sir.
Q. What did you do for them?
A. I was engaged as salesman, and they wanted me to look after these claims for collection.
Q. Did you keep the books?
A. I did not. Walter Miller kept the books.
Q. Then, during part of the time the assignee was paying you $6 a day, you were also getting a salary of $100 a month
321 from Schoolfield, Hanauer & Company?
A. I was.
Q. You collected both?
A. I did.
Q. Look at page 459 of that ledger. Now, there is an entry "March 3, Mrs. O. C. Officer, by one note, $73.21." Whose handwriting is that?
A. Mine.
Q. Did you make that March 3rd?
A. I did.
Q. Were you in the employ of the assignee then?

A. I think so.
Q. That was more than one month after this assignment?
A. Yes.
Q. Look at page 376 of that book. There is an item "March 4th, J. P. Hayes, note, $82." In whose handwriting is that?
A. Mine.
Q. Were you in the employ of the assignee at that time?
A. I think I was. I worked for him about thirty-odd days. I don't mean counting Sundays; I mean working days. There is only 25 days in a month—working days.
Q. Look at page 224: "March 5, 1890, A. P. Williamson, note, $52.79." In whose handwriting is that?
A. That is mine.
Q. Were you in his employ then?
322 A. I was.
Q. Look at page 442: "February 17th, W. G. F. Sylvester."

Claimants object to this evidence as irrelevant. Objection overruled. Claimants except to the ruling of the court.

Q. In whose handwriting is that?
A. Mine.
Q. Look at page 262: "J. C. Malone, March 10th, by cash, $50; by loan, $6.75." In whose writing is that?
A. Mine.
Q. Did he pay you that $50?
A. No, sir.
Q. Who did he pay it to?
A. The assignee.
Q. Was that money paid to the assignee in your presence?
A. No, sir.
Q. Did you see the money?
A. I did not. The assignee told me to give J. C. Malone credit for $50.
Q. On March 10th were you in the employ of the assignee?
A. Yes, sir.
Q. At six dollars a day?
A. Yes, sir.
Q. What other work did you do on March 10th besides making that entry?
A. I was working for Schoolfield, Hanauer and Company.
Q. What else did you do for the assignee that day?
A. I don't remember.
323 Q. How much did the assignee collect on the claims you transferred to him between the time the transfer was made and up to and including March 10th, 1890?
A. I don't know. I did not keep the cash book for him.

Re-examination by R. A. McClellan, Esq.:

Q. Are you a rapid mercantile business man?
A. I don't like to say. I am considered a pretty fair business man.

Q. I mean in making dealings and making out accounts—you are capable of managing that business?

A. Yes, sir.

Q. What wages did you get for that sort of business before you set up in your own work?

A. I got $100 a month, besides the outside business of my own which amounted to about $2,000 a year.

Q. That was in 1881. You had experience from 1881 till that time?

A. I had from 1873.

Q. You spoke of some cotton, about 1,700 bales. Was that all your cotton or was some of it bought for other people?

A. I made cotton another business on commission. I shipped principally to Schoolfield, Hanauer and Company. I wrote them for cash and they sent me the money on it.

324 Q. More or less than the value of the cotton?

A. Sometimes more, sometimes less.

Q. You spoke of a $2,500 note. Did that form part of the account with the corporation?

A. No, sir.

Q. Was that $2,500 justly due the firm?

A. It was, sir.

Q. And that entered into part of the consideration the firm gave you for the property?

A. Yes, sir.

Q. You were asked about some live stock. Did you or not get that stock from your customers?

A. I did.

Q. On debts due you from them?

A. Yes, sir.

Q. You gave them credit on this account for that stock?

A. I did; every one of them.

Q. I believe you said that Walter Miller told you that he had sold $6,000 worth of goods out of this establishment?

A. Yes, sir.

Q. Your trade was for all these articles together in a lump?

A. Yes, sir.

Q. So you paid more than they were worth?

A. Yes, sir.

Q. Take as a whole, under the circumstances of the case,
325 was or not the price reasonable or below or above a reasonable rate your wife paid?

A. She paid a reasonable price.

Q. Some being too high and some too low?

A. Yes, sir.

Q. Did or not those accounts have to be carried over till this winter?

A. They had to be carried over—most of them.

Q. Has Mr. Miller made any efforts through you or by himself to get up the money on these accounts?

A. He did.

Q. Have you collected upon any or many of them?
A. Not very much.
Q. Is it or not a fact that a debt due a merchant in business, as a rule, through the county is much more liable to be collected than a debt due parties out of business or going out?
A. It is.
Q. Why is that?
A. Sometimes on accounts of friendship existing between men and a merchant.
Q. Is it not a fact that to put an old debt in a new one and carry it over in that way will often enable you to collect it?
A. Yes, sir.
Q. After you made the general assignment was everything you had except your exemptions turned over to the assignee?
A. Yes, sir.

Q. What interest did you have in the property in that as-
326 signment after it was made?
A. None.

Q. Suppose the debts had been paid?
A. I would have gotten the balance.
Q. Did you or not endeavor to get the assignee to bring suit against Mr. Strain?
A. I found some property in the hands of Mr. Strain and I told the assignee, and he made him turn it over.
Q. Had your agent got some claims in his name?
A. He did. The assignee sent for him and made him turn them over.
Q. Before you made this general assignment did you talk with a lawyer about the conduct of your agent up there?
A. I did.
Q. If I understood you, you were offered $3,000 for the Elkmont lay-out, in money?
A. I was.
Q. Why did you not take it?
A. Because the property was worth more.
Q. Can you tell how much you put in the Elkmont store during last fall and winter?
A. Yes, sir.
Q. How much was it?
A. About $5,000 worth of goods.
Q. If you remember, about what amount of debts were due that when you broke?
A. I suppose between $17,000 and $20,000.
Q. You got from there, I believe, something over 200 bales of cotton?
A. Yes, sir.

Q. Was that on debts due you there?
327 A. No, sir.
Q. How did you get that?

A. I wrote to him at various times to buy cotton for me and would send money all the time to buy it with.

Q. Was that cotton bought with your money?
A. It was.
Q. Then that was not a part of the assets?
A. No, sir.
Q. How much was collected of that money due on the cotton?
A. Between $4,000 and $5,000, I suppose; but you know the goods I shipped there he had nearly all sold from September 1st to January 1st. A good deal of that was charged on account, which made the assets larger.
Q. That stock of goods was brought down to Athens shortly after these transactions with the claimants?
A. Yes, sir.
Q. Put in this Athens store and sold out?
A. Yes, sir.
Q. You were asked about what other merchants in Athens failed except you. Do you know whether Firsh & Legg failed or were supplanted?
A. Yes, sir.
Q. Did Legg go out a broke man?
A. Without a dollar, he told me.
Q. They all made money last year except you?
A. They did not.
Q. Let me see if I understand you about the L. Bretzfelder claim. When did you transfer them choses in action of
328 yours?
A. I think on January 9th or 10th.
Q. Did you make any effort to pay that debt in full?
A. I did.
Q. How did you do it?
A. I wrote to them that I owed them about $966; I said, "Enclosed you will find claims amounting to about $965, lacking a few cents of the full amount. If you are willing to accept that, dollar for dollar, please send me a receipt in full."
Q. This proposition went along with the claims?
A. Yes, sir.
Q. Who drew up that letter or form of it?
A. My attorney.
Q. Why did not those parties hold those claims?
A. They held the claims, but court in our town made them give them back to the assignee.
Q. Did the assignee bring suit for them?
A. He did.
Q. Who had the claims?
A. Mr. Sanders, attorney for L. Bretzfelder & Company.
Q. It was decided they belonged to the assignee?
A. Yes, sir.
Q. Do you know for what reason?
A. Yes, sir; because they did not send me a receipt in full.
Q. Were the claims accepted by these parties?
329 A. No, sir; they did not accept them according to my proposition.

Q. Have you got a list of your creditors that you owed when the assignment was made?

A. I have. (Reads to the jury.)

Q. Was there anybody but you who could have made out that list of liabilities accurately?

A. No, sir.

Q. Did you not have your liabilities on your book?

A. I did.

Q. You had to see what credits they were entitled to?

A. Yes, sir.

Q. You made out that list from the books and from your knowledge of the business?

A. Yes, sir.

Q. What is the total amount?

A. $15,455.43. (See page 70 (178).)

Q. The debt of these plaintiffs is put down?

A. Yes, sir.

Q. Are Hess, Henle and Company on that list?

A. No, sir.

Q. They have been particular friends of yours in Louisville?

A. Yes, sir; ever since I have been in business.

Q. Were you indebted to them all your books show you paid them?

A. Yes, sir.

Q. Those are the men that backed your wife up in buying that business; I believe you said they endorsed for your wife $3,000?

330 A. Yes, sir.

Q. Have you paid them back anything yet?

A. No, sir.

Q. When is it due to them?

A. October 12th.

Q. It has not been paid?

A. No, sir.

Q. I believe you said you went to Memphis to see these claimants about the 25th day of December?

A. I left Athens on the night of the 25th of December to go to Memphis. I reached there on the 26th.

Q. Did you or not while you stayed there express the opinion that you had no fear or apprehension of any other of your creditors except these Memphis men?

A. I did.

Q. When you got that letter from them did you send back any message?

A. I did. I telegraphed to my clerk, Mr. McGavock.

Q. What was the telegram?

A. "Everything satisfactorily arranged. I feel as happy as a bird in the air; will start for Louisville."

Q. Did you have any authority whatever outside of the contents of those letters to speak or act or do anything for Schoolfield, Hanauer & Company?

A. I did not.

Q. Did you have any message to bear outside of that?

331 A. No.

Q. Did they or not give you that letter at your own request?

A. They did.

Q. You were not their agent in giving that?

A. I was not.

Q. Who was it you presented that letter to?

A. Mr. Julius Bamberger.

Q. Is he here?

A. Yes, sir.

Q. Was anybody present at that time?

A. There was not.

Q. Was that proposition of the Schoolfield-Hanauer Company accepted or refused?

A. It was refused.

Q. Did or not these notes that you afterwards gave to the plaintiffs have any connection with the proposition that you carried there from the Memphis house?

A. They did not.

Q. Did you or not make that arrangement with the plaintiffs on your own hook, independent of anything about the Memphis house?

A. I did.

Q. That was how long after they had refused the proposition?

A. About two days.

Q. In the meantime did you send any friend of yours to the plaintiffs to endeavor to get them to agree to give that extension?

A. I did. I sent Mr. Leopold Mendel.

Q. Did he go in the direction of their business house and

332 come back from that direction?

A. He did.

Q. Did you go to Louisville by Nashville?

A. I did not.

Q. Did you come from Louisville home by Nashville?

A. Yes.

Q. You went to Louisville by Memphis?

A. I went from Memphis to Louisville, not by Nashville.

Q. Did you stop at Nashville as you came back?

A. I did not.

Q. Did you stay there long enough to get supper?

A. Yes; I got supper; I stayed there about 30 or 45 minutes.

Q. Did you see any creditors of yours there?

A. I did not.

Q. You gave these notes to the plaintiffs how?

A. I gave one due January 15th for $1,000; one due February 1st for $500; one due February 15th for $500; one due March 1st for $500; one due March 15th for $500; one due November 1st for $1,142.52; one due November 15th for $1,142.50, and the other due December 1st for $1,142.50.

Q. Was any extension given on the amount of $200 of your debt to them?

A. No, sir.

Q. Prior to the giving of these notes what was the condition of your indebtedness to Bamberger, Bloom & Company?

A. It was in a note for 4,700 and odd dollars and an open account, except $200 which was not due.

333 Q. When would it have been due?

A. February 1st; there was no extension beyond February 1st of that note.

Q. Did they render you any accounts?

A. They did.

Q. Was that $200 in it?

A. It was not.

Q. Is this the statement of your indebtedness to the plaintiff- (handing witness a statement)?

A. Yes, sir.

Q. Is that item of over $200 on that, that there was no pretended extension about?

A. Yes, sir; this is it. (Reads:) "One invoice of September 6th, $211.75."

Q. What time is specified on that?

A. Dated Oct. 1st, four months' paper.

Q. Is that the top item of the statement?

A. No, sir; it is the 4th item.

Q. Was it or not due early in January?

A. Yes, sir; as an average bill it was due.

Q. If those goods were sold on September 6th at 4 months was not the money due on January 6th?

A. No; it ran from October 1st.

Q. Mr. Warten, is there or not a balance drawn down there without an extension of a day or an hour?

A. There is.

Q. What is the balance on that account before the claim was made?

A. $6,646.77.

Q. What is intended between merchants by an average account?

334 A. If I go on and ask for a settlement and give one note due December 1st for $3,000 and one due February 1st for $3,000, that would be an average due January 1st of $6,000.

Q. Then when you came to make this settlement with these plaintiffs on or about the 1st of January all of that would have been due?

A. Yes, sir.

Q. Did these plaintiffs send by you any communication to these claimants?

A. They did not.

Q. And, as far as you know, they never accepted the proposition?

A. They did not; they ignored the proposition.

Q. You said, in answer to the other side, that you dispatched back

to these claimants Saturday evening that the parties demand $3,000 cash—the cost that was spoken of. Was it represented by these short notes?

A. Yes, sir; that is what I called cash.

Q. Was or not that regarded as cash under the circumstances, then?

A. It was.

Q. How long had you been dealing with these plaintiffs?

A. I commenced in 1882.

Q. How much money have you paid them since then?

A. Between $75,000 and $100,000.

Q. Have you been a constant customer of theirs from the
335 time you went in business until last winter?

A. I have.

Q. Did any agents of that firm ever come to Athens—your place of business?

A. Yes, sir.

Q. Any of the proprietors ever been there?

A. I don't think any of the proprietors have ever been there.

Q. Anybody except their drummers been there since you commenced dealing with them?

A. No, sir; I don't remember it.

Q. Did you go frequently to their house in Louisville?

A. I did.

Q. They were well acquainted with you?

A. They were.

Q. Have they considerable dealings in the county besides you?

A. They have.

Q. Were or not these plaintiffs familiar with the geography and the condition and the kind of crops to be raised in Limestone county, Alabama?

A. They were.

Q. State whether or not cotton is the chief source of revenue for merchants in Limestone county.

A. It is altogether.

Q. State whether or not, among the thousand that you paid these plaintiffs, it was paid with cotton or the proceeds of cotton.

336 A. It was paid with the proceeds of cotton.

Q. Did these plaintiffs know that?

A. They did.

Q. Were your customers, as a rule, engaged in cotton planting?

A. They were.

Q. Was your failure caused by the short cotton crop last year?

A. It was.

Q. Is or not the cotton resources of merchants in your county about exhausted by January 1st?

A. It is.

Q. What other resources would a merchant have, as a rule?

A. Nothing at all outside of cotton.

Q. Any stock of any consequence raised in that county?

A. No.

Q. Any corn raised for market to any amount?
A. No, sir.
Q. Did you or not in your application for an extension, whether on your own hook or any other way, tell these plaintiffs that the extension desired was until the next fall?
A. I did.
Q. When you gave these notes did you have any intention of meeting them if you could?
A. I did.
Q. What efforts did you make, when you got back home, to meet these notes?

A. I telegraphed my agent at Elkmont to come down at
337 once the very moment I got to my store.

Q. Had you any reason to look to that store for help?
A. Yes; he had not paid me hardly anything.
Q. Had he promised you anything?
A. He had.
Q. How much?
A. He told me he could get me up about $5,000 or $6,000.
Q. Did he come to Athens?
A. He did.
Q. Did he make any showing?
A. Yes, sir; he said, I can get you up at least $2,000 this week and about $1,500 next week.

Plaintiffs object to this question and answer on the ground that it is incompetent and is a conversation between the witness and his clerk, and that he is not allowed to make evidence for himself. Objection overruled. Plaintiffs except.

Q. Was there anything you expected to get to meet those debts?
A. I did.
Q. From your Elkmont store?
A. Yes, sir.
Q. How much had you reason to get there in a few days?
A. About $3,000 or $4,000.
Q. Did you get anything from there?
A. I got $60.
Q. Did you make any efforts or go to Elkmont to get anything there?

338 A. I spent nearly every night there the second week; after I found out that he did not give me the money. I asked him what he had done with the money. He gave me no satisfaction at all. He paid me $100, and I had to pay out $40 of that.

Q. Did you then make any efforts to get up this live stock?
A. I did. A mule drover said he would be there Thursday or Friday, but he did not come.
Q. Mr. Hill made you an offer?
A. He did, but I refused it.
Q. When these resources failed did you have any other business by which you could meet these notes?
A. I did not.

Q. When did you first make up your mind to give these Memphis parties preference in the payment of their debt? When was the first conversation you had with Mr. Miller about giving him preference in the payment of his debt?

A. Saturday, January 11th, 1890.

Q. Did you tell him anything about the general assignment you purposed to make, if you purposed to make any?

A. I did not.

Q. Did he see any general assignment, as far as you know,
339 or hear of any before you made your trade with him?

A. He did not.

Q. If I understood you, you come substantially upon the terms of your trade on Saturday evening?

A. Yes, sir.

Q. On Saturday night the bill of sale was drawn up?

A. Yes.

Q. When did you first consult a lawyer about financial condition and the probability of your failure in that connection?

A. The latter part of November or the 1st or 2nd of December.

Q. Who did you consult?

A. You (Mr. McClellan).

Q. What was the first thing, if any, you discussed?

A. I asked him if I would be forced to make a general assignment if I could prefer my home creditors.

Q. Did you or not on that occasion mention some parties you wanted to give preference to?

A. I did; Major Legg was one and various other parties at home.

Q. Was anything said about clerks?

A. Yes, sir.

Q. Was anything said about Dick Pryor?

A. Yes, sir.

Q. Had you then determined to make a general assign-
340 ment or were you apprehensive that you might be smash-up before the season was over?

A. I knew that I would go under unless some of my large creditors would come to my rescue.

Q. When was it that you first gave positive instructions, if ever you did, to draw up a general assignment to be executed at some future time?

A. I think on Saturday.

Q. What time—early morning or late evening?

A. I think in the evening. I could not remember exactly.

Q. It was some time on Saturday?

A. Yes, sir.

Q. Do you know who paid the attorney's fees for drawing up this bill of sale and making the contract by you with these parties?

A. I do.

Q. Who did?

A. Mr. Miller.

Q. How much did he pay?
A. $100.
Q. You never paid anything for that, did you?
A. No, sir.
Q. So far as you know, when did Mr. Miller first meet R. A. McClellan?
A. When I took him down to the office on Saturday night.
Q. What time of night was it?
A. Between 7 and 8 o'clock—right after supper.

341 Q. When did you begin to give preferences to your creditors? Had you or not paid creditors constantly from the 1st of September till the final smash?

A. I did.
Q. How many of your creditors did you give preferences to after January 1st?
A. I paid Seasongood-Mendelson Company $1,450; A. Nelgans, $140; Hess, Henle & Company, $2,900; L. Bretzfelder & Company, 900 and some odd dollars. I paid Perry-Mason Company 400 and some odd dollars; J. T. Fargason & Co., $600. I paid my clerks. I paid Mr. Pryor and my attorney.
Q. You said the other day that you paid me some money. Was that for services during the year?
A. Yes, sir.
Q. How many suits had I brought for you during the year 1889, if you remember?
A. I suppose 15 or 20 odd.
Q. About how much was involved in those suits?
A. I suppose about $8,000 or $10,000.
Q. Were judgements obtained by me on nearly all of them?
A. On nearly all of them except two or three.
Q. Do you recollect whether you paid me anything for your consultations with me from November until you passed out of business?
A. Yes, sir.
Q. What was it?
A. I don't recollect the amount.

342 Q. That had nothing to do with the services rendered Mr. Miller and drawing up the papers?

A. No, sir.
Q. You were asked something about some transactions with the Louisville Banking Company; how much were you indebted to them last year—the highest amount?
A. $7,000.
Q. How much of that was paid by you before you broke?
A. $5,000.
Q. What amount of collaterals did they have of yours?
A. They had my Decatur stock, 150 shares.
Q. Did they have any notes, accounts, and mortgages?
A. Yes, sir; they withheld some mortgage deeds.
Q. What was about the aggregate amount of collaterals outside of the stock?

A. I think about $10,000.

Q. Have arrangements been made to pay this $2,000 balance since you broke by the assignee?

A. Yes, sir.

Q. What did they do with the Decatur stock?

A. They sold it.

Q. Were any of those choses in action returned to you after the stock was sold?

A. They were not.

Q. Do you know whether they were ever returned to the assignee?

A. They were never returned to me.

343 Q. The general assignment, you said, was executed somewhere about 11 or 12 Monday morning?

A. Yes, sir.

Q. The bill of sale was executed a little before 6 in the morning?

A. Yes, sir.

Q. That was delivered to him before this general assignment was executed?

A. Yes, sir.

Q. Were these mortgages, notes, and accounts all given up to him before the general assignment was executed?

A. Yes, sir.

Q. Had they given you those two receipts or not before the general assignment was executed?

A. They had, at the same time I executed the bill of sale.

Q. Did Mr. Miller give up your notes, then?

A. Yes, sir.

Q. I want to ask you whether, after you broke, that day or the next day, in the town of Athens, any citizens there or anywhere else went to your house and gave your wife any money.

A. Yes, sir; Thursday morning while I was sick Mr. Ben. Lee Allen, who was at my house, gave my wife a $20 gold piece.

Q. Who is he?

A. One of our first citizens. He is circuit court clerk.

Q. What was done with the money?

A. I returned it to him.

344 Q. Was anything else given to her?

A. Yes, sir; a few days after one of her brothers, Dave Malone, made her a present of $100.

Q. Did she keep that or did you return that?

A. She gave it back, too.

Q. What night were you taken sick?

A. I was taken sick on the night of January 15th.

Q. Was it the general understanding in the community for some hours that you were dead?

A. (Not answered.)

Q. Since your wife bought the remnant of this property has she bought goods in market on credit from other people besides Hess, Henle & Company?

A. She has.

Q. About what amount of goods has she thus bought on credit since then?

A. I suppose about $6,000.

Claimants then introduced H. G. MILLER, who testified as follows:

Direct examination by DAVID POSTON, Esq.:

Q. What is your business, Mr. Miller?

A. I am a merchant.

Q. What is your firm?

A. Schoolfield, Hanauer & Company.

Q. How long have you been engaged in business under that name?

A. About 28 years.

345 Q. Where were you raised?

A. In Fayette county, Tennessee.

Q. Who composed the firm of Schoolfield, Hanauer & Company?

A. Schoolfield, Hanauer & Co. was composed originally of five—Jacob and Louis Hanauer, Henry Thomas, W. W. Schoolfield, and myself. Jacob and Louis Hanauer and Henry Thomas are now dead.

Q. Who composed the firm in the year 1889?

A. Louis Hanauer, W. W. Schoolfield, & H. G. Miller.

Q. When did Louis Hanauer die?

A. I don't recollect.

Q. You and Mr. Schoolfield are the surviving partners?

A. Yes.

Q. When was the Schoolfield-Hanauer Company organized?

A. In April, 1889, I believe.

Q. Who are the stockholders in that company?

A. Louis Hanauer, W. W. Schoolfield, and myself, and originally Will. H. Miller and J. O. Coxe. Since then I have given the stock of Will. Miller to Walter Miller.

Q. What dealings have you had with Henry Warten? When did they begin?

A. About 1881 or 1882. We sold him his first bill of goods.

Q. Continuously then up to what time did you have dealing with him?

346 A. Up to the 13th of January of this year, all the time.

Q. On the 13th of January, 1890, how did his account stand with the firm and the corporation?

A. He owed the corporation, the Schoolfield-Hanauer Company, $3,882.53; he owed the firm of Schoolfield, Hanauer and Company $17,032.40.

Q. How did his account stand on the firm books that day?

A. Well, he did not owe us anything; it was all closed by notes.

Q. He had no account on the firm books; you had his notes?

A. Yes, sir.

Q. What was the amount of the notes?

A. The notes, with interest, amounted to $17,032.40.

Q. You have seen the notes produced by Mr. Warten. Are those the notes representing his account with the firm?

A. Yes, sir.

Q. How was the indebtedness of the corporation evidenced?

A. He owed a balance of $3,882.53; that was evidenced by open account.

Q. How were those amounts settled?

A. Mr. Warten sold me the stock of goods at Athens, the stock of goods at Elkmont, some real estate, and some notes and accounts, making the amount of $17,032, lacking a few dollars, which
347 he never paid. I think that it was $14 or $15 which was lacking when the notes were turned over. The Schoolfield-Hanauer Company debt was settled with notes and accounts, for which I gave him a receipt in full.

Q. Then you took that stock of goods and the other property, and that squared the accounts with the corporation and the firm?

A. Yes, sir.

Q. Had he given you any papers?

A. He gave me a bill of sale. (Witness reads bill of sale as copied on page 14 (48) of this transcript.)

Q. Is that real estate you took embraced in that bill of sale?

A. Yes, sir. I have deeds for them, but they are mentioned here.

Q. When were those papers delivered to you?

A. They were delivered to me about 6 or a little before on the morning of January 13th, which was Monday.

Q. When was the trade made for the goods?

A. On Saturday.

Q. What time in the day?

A. I don't recollect exactly. I got there about 11 o'clock, I reckon. I walked round town a little bit, and then went into his store and wanted to know what he wanted with me. He made me the proposition, and I protested against it a little bit, and he
348 told me that was all he could do for me, and I walked round the house and looked about and went back and told him I would have to take it. I then went out to find a lawyer. I did not know anybody there, and I knew I would have a good many little claims and I went and asked about Mr. Sanders (I had heard he was a promising young man), but finally I went to Mr. McClellan and saw him in his office, and he said he would write up the papers for me that night, and that night I went up there and the trade was written out.

Q. What examination and investigation did you make of the property?

A. Mr. Warten gave me his invoices and I went through the house and looked at the stock. I did not know much about it, I am not a dry-goods man.

Q. Is that the book he furnished you?

A. Yes, sir; that is the book containing the invoice.

Q. What was the invoice of the stock of goods at the Athens store?

A. It was $9,927.78.

Q. Were there any deductions from that?

A. He gave me ten per cent. off, and when I traded there had been $303 worth sold. That left $8,631.24.

Q. What was the Elkmont stock invoiced at?

349 A. The invoice of that was $2,618.19.

Q. Was anything to come off of that?

A. He knocked off 20 % and the amount of the sales, $45.92, leaving a balance of $2,048.84; shoe cases and things, $49, which made $2,097.84.

Q. What did you take the Elkmont stock at?

A. $2,097.84.

Q. How many mules did you buy?

A. 46 head of mules and horses. I gave him $2,760 for them.

Q. You got some real estate. What was it and what did you pay for it?

A. One house and lot at Elkmont Springs, Tennessee, at $250; house and lot at Elkmont, Alabama, $500; three-sixteenths interest in land in Jefferson county, Alabama, at $500.

Q. Did you get anything else from him?

A. He gave me a note on Charles R. Getty for $1,384.94; one account on Frank Petty for $186.76, and one note on Sam. Donevent for $13.87.

Q. All that property, I understand, was taken in payment of the firm debt?

A. Yes, sir.

Q. Now, how did you settle the corporation debt?

A. That was settled by notes and accounts.

Q. By a bill of sale?

A. Yes, sir; he gave me a whole lot of notes and accounts.

350 Q. What did they amount to?

A. To $3,868.51; lacked a few dollars of being enough to pay the indebtedness.

Q. These bills of sale were handed to you just a few minutes before 6 o'clock on Monday morning, January 13th?

A. Yes, sir; and then I handed him the receipts and turned him over his notes. I asked him for the keys; took possession, locked the door, and put the keys in my pocket; went to Elkmont; got possession there; got on the cars and went to the place in Tennessee; made the transaction there and got on the cars and came back to Athens.

Q. From and after that day does or not Henry Warten's account appear on your books?

A. It does not; never had any dealings with him after that as an individual.

Q. What did you do with the property after you got it?

A. I stayed round there two or three days and did not sell anything, hardly. I sold a few barrels of salt and may have sold a barrel of molasses. I never tried to sell any goods for three or four days. My object was to sell it all in bulk. I had written to a party at Bartlett, Tennessee, intending to sell him the goods. I had

not sold any goods to amount to anything till they were levied on.

351 Q. What did you do about the business?

A. As soon as they were levied on I sent to Memphis and got me a bond, and when it came back I replevied the goods, and as soon as they were replevied I threw open the doors and went to work. In the meantime I had telegraphed to my son, Walter Miller, to come there, and when he came I put him in possession. I stayed there till I got it started, and took my son to the bank and gave him power to check or anything he pleased. I stayed there two or three days and went home.

Q. How long did you continue the business there?

A. Until about June, I think.

Q. What amount of goods, if any, did you furnish there?

A. My son bought some goods from Louisville, and he bought a few little orders of meat and things there at Memphis.

Q. What was that for?

A. It was just a little meat and things. I reckon he sold it and got the cash for it. It was because the stock had run down so that he had no assortment, and they thought they would sell it cheaper to sell out the goods.

Q. What were your instructions to them?

A. To sell at cost or any other way.

Q. Do you know where the goods at Louisville were bought?

A. No.

352 Q. What ever became of that stock of goods?

A. I sold the remnant of it to Mrs. M. A. Warten.

Q. State how that sale was brought about.

A. My son came down to Memphis and told me.

(Plaintiffs object to this answer.)

Q. Did Warten come to Memphis?

A. Yes, sir; he came and wanted to trade for it. I invoiced it to see what we had got out of it and how much we had on hand, and I sold him the stock for $7,600. I sold it to him for a little more than that in a lump, the aggregate concern. They had to divide up the accounts to see what it was for, and Schoolfield and the book-keeper figured it up so each account would have its amount, and Warten accepted it. He got to fussing, though, about the *the* interest on it, and they took the interest off, which reduced it to about $7,609, I believe. I did not do any of the dividing. Schoolfield did that. I made the trade.

Q. In whose name was that trade made?

A. Mrs. M. A. Warten's.

Q. The proposition was for her to buy through her agents?

A. Yes, sir.

Q. What were they to pay you?

A. $3,200 cash, which was pretty near 50 % in cash. I took the notes for the balance of it.

353 Q. State how that was proportioned and how much cash you got and on what accounts.

A. We got $3,200 in cash. They proportioned it out in the bill of sale. I did not figure that out; the book-keeper did.

(Reads the bill of sale from Schoolfield, Hanauer & Co. to Mattie A. Warten, see page 79 (189) of this transcript.)

Q. In other words, you sold all the assets, notes, and accounts that had not been collected and the Athens and Elkmont stock of goods that had not been sold out for $3,558.94?

A. Yes, sir.

Q. Did you sell the lands back to them?

A. Yes, sir; for $1,250 cash.

Q. What else did you sell to them?

A. I sold them the Schoolfield-Hanauer Company accounts.

Q. What did you sell them for?

A. I never figured that out myself. I only made the trade.

Q. You got then about $3,200 in cash and notes amounting to about $4,500 or $4,600?

A. Yes, sir.

Q. These papers show exactly how those matters are?

A. Yes.

Q. Did your firm keep an account with that business in any shape or form after you sold out?

A. We kept an account on the corporation books of all our
354 business after April on one set of books. This account was kept in the name of the Athens store.

Q. Did that account show all the transactions?

A. Everything.

Q. Do you mean from the time of the sale by you to Mrs. M. A. Warten?

A. No, sir; from the first sale.

Q. Have you got that account?

A. Yes, sir. (Produces it.)

Q. Does it show how it was closed; by profit or loss or how? What does it show; loss or profit?

A. About $6,000 loss.

Q. What does it show charged to the Athens store?

A. $22,500.08. (Reads statement of acc't of Henry Warten with Athens store.)

Q. What is the balance brought down to debit?

A. $6,181.36; that did not include the wages of my son, though.

Q. I understand that when you bought out that stock and all the property from Warten, including everything, you simply opened an account with the Athens store and charged it with everything you received?

A. Yes, sir.

Q. And with all the goods you furnished it and all the money?

A. Yes, sir.

Q. And you credited it with what you received from it?

A. Yes.

355 Q. And you struck a balance and that left a balance of about $6,100 that you lost on the concern?

A. Yes, sir.

Q. You say there were other losses not put in——

A. There were my son's wages; he was getting wages at Memphis and could not receive them at both places.

Q. I notice on that statement some little bills for $28 and $45; were they bought in Memphis?

A. Yes, sir.

Q. I see credits there for just the same amounts on the credit side?

A. Yes, sir; I think he ordered things there just for different people, and when he turned them over they would pay him for them.

Q. Are you engaged in a pretty large business?

A. Yes, sir; I think we do the largest grocery business in Memphis, nearly $1,000,000 of groceries; it aggregate- about $2,000,000.

Q. Do you keep an extensive set of books?

A. Yes, sir; our books are immense; they are about 1,000 pages, the ledgers and *and* journals; we keep two book-keepers and one cotton book-keeper.

Q. Some questions has been made as to the production of your books here; why have you not brought them here?

356 A. It is an impossibility. There is too much money on the books. I would not risk the books on the train for $10,000 or $20,000; there are many thousand dollars on the books, and if they were burned up I would be gone up, and then we have accounts on the books that we are needing every day.

Q. Are these correct statements from your books?

A. Yes, sir.

Q. In other words, you cannot bring them here on account of their large value to you?

A. Yes. I would have to close. We have 1,400 or 1,500 customers, some of them coming there every day to settle their accounts, and it would be a great inconvenience to them.

Q. Is this your busy season?

A. Yes, sir.

Q. When that matter was closed on the books in that sort of shape did you ever do any business with either Warten or his wife?

A. I have with his wife since I sold out to her.

Q. Never had anything more to do with Warten individually?

A. No, sir.

Q. Who was your attorney at Athens?

A. Mr. McClellan.

Q. You acted under his advice in the matter?

A. Yes, sir; and I paid him $100 for it.

357 Q. Did he draw up this bill of sale at your instance?

A. He did.

Q. When did you first know about any general assignment being contemplated by Warten on the 11th?

A. I never heard of it until we got back from Elkmont late that evening. He never mentioned anything about it.

Q. What time did you get back from Elkmont?

A. About 11 o'clock.
Q. What time did you take possession of the property?
A. I took possession of the property about 6 in the morning.
Q. From November to that time you had not heard of any general assignment?
A. I never thought of any such thing.
Q. It was after you came back from Elkmont that you heard about it?
A. Yes, sir.
Q. Would you have sold these goods to Warten personally?
A. No, sir.
Q. Why?
A. Because it would have been attached in about 5 minutes.
Q. What sort of business man was Warten?
A. I think a very fine business man, sir.

358 Q. In your dealings with him through a number of years was he a close business man?

Plaintiffs object to this question because it calls for illegal & incompetent testimony. Objection overruled by the court. Plaintiffs except to this ruling of the court.

A. He was about as close as I ever had business with. If there was any entry of overcharge he would write back about it. I used to think he fussed too much about it.

Plaintiffs object to this answer for the same reason stated in their objection & the interrogatory & which it is an answer. Objection overruled & plaintiffs except.

Q. In the sale of these goods at the time you bought them, at Athens, on the 11th or 13th of January, how did you arrive at a basis?
A. Warten told me he would sell me the stock of goods, notes, and accounts, and when we went to finish up the sale at McClellan's office I fussed about the price. He wanted me to take them at 10 or 15 per cent. off; I wanted 25 % off the Elkmont stock, and we had right smart talk about it, and finally we agreed on 20 %.
Q. Did you make any objection to the price of the Athens stock?
A. I did, and told him that he ought to take off more than 10 per cent. off of that, but he would not do it.

359 Q. In the purchase of that entire property did you pay him the full value of the property?
A. I considered that I paid him more than the value, and told him so.
Q. After the bills of sale and the transfer were made, on the morning of the 13th, what interest did Henry Warten have in any of the property?
A. He didn't have a bit.
Q. Were there any agreements between you and him, either express or implied, that he was to be employed or have any interest in the property at any time?

Q. Not a bit. I would have been very foolish to have made a trade and then give part of it back.

Q. How long after the trade before you took him back?

A. I don't remember the day, sir. I went up to Athens two or three weeks after the trade to look after the stock and see how everything was going on, and I found out that Mr. McGavock was going to quit me, and I was bound to have somebody there that knew the accounts and the stock. The accounts were a big thing with me. If it had not been for them I would have moved the stock of goods to Memphis, and while my son could attend to the business he didn't know anybody—didn't know a man that owed us—and I then employed Warten.

Q. When was it you first approached him?

360 A. Three or four weeks after the sale; I don't recollect the day.

Q. Was anything said before that time between you and him about your employing him?

A. Not a word; in fact I would not have employed him then if I had not consulted my lawyer and found out that I could.

Q. Did you consult a lawyer as to whether it was lawful and proper before you employed him?

A. Yes, sir.

Q. Did you make any effort to sell this stock of goods in a lump?

A. Of course I did. As I stated to you, I tried to sell it to a party at Bartlett. John Ellis was his name. He had told me two or three months before that that he had $8,000 or $10,000 and wanted to go in business. I was trying to sell the stock of goods at wholesale.

Q. Did you make such an announcement in Athens?

A. I made an announcement there that I would sell the stock of goods and everything out at $15,000.

Q. What was the condition of things when you sold out?

A. It was eating itself up in expenses. If I had kept on running it I wouldn't have had nothing.

361 Q. Do you know about what amount of stock you had on hand when you sold out to Mrs. Warten?

A. I know what my son told me.

Q. Do you know what the gross sales were out of the store at that time?

A. Only by the statements. I know about what we realized on the whole concern.

Q. What did you all go to Prospect, Tennessee, for?

A. To make the Schoolfield-Hanauer Company trade.

Q. You went up there on the advice of a lawyer?

A. Yes, sir.

Q. Why did you go to Prospect, Tennessee?

A. I went there to make the trade with Warten for the Schoolfield-Hanauer Company, because we did not have any agent for the State of Alabama for the corporation; no registered agent.

Q. Had the corporation taken out license to do business in Ala.?

A. It had not.

Q. Have you since?

A. Yes, sir.
Q. Did you know it was necessary?
A. No, sir.
Q. Did you make open and public notice of the possession?
A. Everybody knew it; of course I did.
Q. You held it in your own name from that time until you sold it?
A. Yes, sir.
362 Q. How was your bank account kept during that time?
A. With the Schoolfield Company.
Q. Did you see the local read from this paper a day or so ago?
A. Not till you showed it here, sir.
Q. When did you first see it?
A. When they pulled it out here.
Q. Was it authorized by you?
A. No, sir.
Q. Was it a fact, as stated there, that Henry Warten was the "manager"?
A. No, sir.
Q. Who was?
A. Walter Miller.
Q. How came the assignee having an office in your store?
A. I had no use for the desk and office back there, and Mr. McGavock was in my employ, and he was assignee, and I did not want him to be out of the store and I gave him permission to use the office.
Q. What arrangement did you make there about the store rent?
A. I rented the store from Dr. Westmoreland.
Q. And gave the company's paper for it?
A. I gave the Schoolfield-Hanauer Company's note.
Q. What about the insurance?
A. I went over and had that transferred to me.
Q. Were the advertisements made in your name?
363 A. I don't think I advertised any. I don't know whether my son did or not.
Q. In addition to surrendering the notes you say that you gave Warten some receipts; what sort of receipts were they?
A. Receipts in full.
Q. From both houses?
A. Yes, sir.
Q. Were those receipts that were read here the ones you gave?
A. Yes, sir.
Q. In regard to this letter you saw here (handing witness the letter from the Schoolfield-Hanauer Company to Bamberger, Bloom & Co., dated December 27th, 1889), what do you know about that?
A. Mr. Warten came to Memphis and came to see me; nearly all his transaction- were with me; he came and told me he wanted an extension until December 31st, and that he wanted me to give him an extension.

Plaintiffs object to what Warten stated to him because it is illegal,

irrelevant, and inadmissiable. Objection overruled by the court. To this ruling of the court the plaintiffs duly excepted.

Q. What day was that he was there?

A. The day the letter was written Warten came to me and asked me to give him this extension until December; told me that
364 if he could get that from two other of his large creditors he would not ask the others; that would enable him to pay them off; that he did not want to owe his little creditors. I called Mr. Schoolfield down and we consulted about it. I told him to go and write a lettter, and he went and wrote it, and I looked over it and handed it to Warten.

Plaintiffs object to any conversation between Warten and the witness and Schoolfield at that time because it is illegal and inadmissible. Objection overruled by the court. Plaintiffs except to the ruling of the court.

Q. Was it at Warten's request that you gave him that letter?

A. Yes, sir.

Plaintiffs object to this evidence on the same grounds as above laid down. Objection overruled. Plaintiffs except.

Q. To whom was the letter addressed?

A. Bamberger, Bloom & Co.

Q. Warten came to you to get your agreement for an extension and you wrote that letter at his request?

Plaintiffs object to this question on the same grounds as above stated. Objection overruled. Plaintiffs except to the ruling of the court.

A. Of course I did.

Q. Did you or not make Warten your agent to make any
365 agreement with Bamberger, Bloom & Company?

A. No, sir.

Q. What authority, if any, had he to make any arrangements with them to be binding on you?

A. None.

Q. Did Bamberger, Bloom & Company ever answer that letter?

A. They did not.

Q. Did they ever send you any message?

A. Never did, sir.

Q. Did you ever hear from that matter in any manner, shape, or form?

A. Warten telegraphed us that they wanted $3,000 cash.

Q. Have you got that telegram?

A. Yes, sir. (Witness produces and reads telegram, heretofore copied, from Henry Warten to Schoolfield, Hanauer & Company, "dated 12, 28, 1889".)

Q. What does that "12, 28" mean?

A. The 12th month and 28th day.

Q. You got that on the 28th of December?

A. Yes, sir.

Q. Warten left Memphis on the 27th and on the 28th he sent you that?

A. Yes, sir.

Q. And from that day to this you have never heard from Bamberger, Bloom & Company?

A. No, sir.

366 Q. What answer did you make to that dispatch?

A. We telegraphed that we could not advance any money.

Q. Who was that answer to?

A. Henry Warten.

Q. Then that ended all the question, so far as you were concerned; they never replied to your letter?

A. No, sir.

Q. And the only notice you had was the telegram that they demended $3,000, and you declined that?

A. They did not agree to it, and then we would not either.

Q. You declined to furnish the $3,000?

A. Yes, sir.

Q. When did you next see Henry Warten?

A. I left Memphis immediately on getting that telegram and went to Athens.

Q. When did you see him?

A. I think I got there before he did.

Q. What took place between you and him then?

A. I told him I expected they would be attaching him and wanted him to fix me up, and he told me to hold on; that he hoped they would get it fixed.

Q. Did you extend his paper at all?

A. No, sir; I did not accept his proposition about an extension, the others not doing it.

367 Q. Did he make any statement about his ability to get the $3,000?

A. He said he was going to get up some money and pay me some, but he did not do it.

Q. How long did you stay there?

A. About a day.

Q. When did you go there next time?

A. That Saturday morning, I think; he telegraphed me to come there.

Q. And you had a conversation and the sale took place?

A. Yes, sir.

Q. When you got that telegram from Warten and went to Athens that night were all negotiations off between you and Bamberger, Bloom & Company?

A. Yes, sir. I did not have no negotiations with them. I had no proposition with them. I just simply stated that if they would do a thing I would do the same thing.

Q. When you made this trade with Warten on the 11th and finally on the 13th did you or not take his assets simply at a fair valuation?

A. I did.

Cross-examination by MILTON HUMES, Esq.:

Q. You are a member of the firm of Schoolfield, Hanauer
368 & Co. and also a large stockholder in the corporation, the Schoolfield-Hanauer Company?

A. Yes, sir.

Q. You were in Athens frequently during the fall and winter of 1889?

A. Yes, sir.

Q. How often?

A. I was there three or four times.

Q. What was your business there?

A. I was there trying to collect my debts, sir.

Q. What debts were due you from other people but Warten?

A. Mr. Sykes and Mr. Martin and Mr. Russell were owing me.

Q. Was not the indebtedness of Warten to your firm much the larger?

A. Yes; his was the largest.

Q. Larger than all the rest put together, was it not?

A. Yes.

Q. Was it not three times as large?

A. Yes; four times as big.

Q. And you were there frequently during the fall and winter looking after that indebtedness?

A. Yes, sir.

Q. How long before December 30, 1889, was it that you paid your last visit to Athens?

A. I don't recollect the day.

Q. Were you there during December?

A. I think I was there in November the last time.

Q. And then not again until you went up in the early part of January?

369 A. I think that is so, sir.

Q. Did you send any one there during December to see Mr. Warten about his indebtedness to you?

A. I believe I was there in December. I sent a man up in December, directly after Warten went, to protest. When Bamberger, Bloom & Company protested him I was not at home, and Schoolfield, Hanauer & Company sent Jake Stern and Frank Poston up there, and I followed them the next day, when I got home.

Q. Who is Frank Poston?

A. He is a lawyer in Memphis.

Q. Was it your custom, in your connection with the firm, to go to Athens and to other points in that way?

A. Yes, sir; whenever they were behind; that is the reason I was there.

Q. These statements that have been furnished here show what amount was received by the firm and the corporation in the months of December and January?

A. Yes, sir.

Q. Do they show all?

A. Yes, sir.

Q. They do show that you did receive credits upon Warten's indebtedness to you in the month of December and in the month of January?

A. I never noticed about that; I expect they do. He never paid us any money; he just shipped cotton.

370 Q. He shipped cotton during both months?

A. I think he did. He may have shipped us cotton in December and it was not credited up until January. It would not be credited to him until it was sold.

Q. But as soon as you would get it in your possession you would sell it and apply the proceeds to his indebtedness to you?

A. Yes, sir; sometimes it would be 2 or 3 weeks before it was sold.

Q. But it was not subject to his order?

A. No, sir.

Q. I understood you to say that you went to Athens on the 1st of December, or was it the 1st of Jan'y?

A. I don't recollect the day. I went there directly after we got that telegram from Warten.

Q. Suppose the day you got that telegram was the 29th of December?

A. Well, I immediately left and went to Athens.

Q. You started for Athens on the first train after receiving that telegram?

A. I don't know. If it was Saturday I might not have gone until Sunday night. I got to Athens before Warten got there.

Q. What time of the day or night did you get to Athens?

A. I went on the Charleston train and got to Athens about

371 8 or 9 o'clock, I reckon.

Q. Was Warten in Athens then?

A. No, sir.

Q. How long after you got there did he come?

A. I think he got there the next day. I stayed there until he come.

Q. You went for the purpose of seeing him?

A. Yes, sir.

Q. What did he tell you?

A. That they would not accept it unless he paid them the $3,000, and that he was going to try to raise the $3,000.

Q. Didn't he tell you he had given his notes?

A. No, sir.

Q. You say he did not tell you he had given a note payable Jan'y 15th?

A. He didn't tell me anything about it.

Q. Did he not tell you that they had given him an extension of the indebtedness?

A. No, sir; he did not.

Q. Didn't you ask him?

A. He told me they would not extend it.

Q. You say he did not tell you that Bamberger, Bloom & Com-

pany had given him an extension of $3,000 on that indebtedness, payable in instalments during the latter part of the winter and the early spring & the balance till fall and winter?

A. He did not.

372 Q. Did you not ask him whether they had made an arrangement or not?

A. I asked him what he had done. He said they wanted $3,000, and that he thought he could raise the $3,000 in a short time.

Q. Did he say that he had been given time in which to raise it?

A. I don't know that he did. He might have done it.

Q. What is your best recollection?

A. My recollection is that he did not. He told me that they did not extend it at all.

Q. Mr. Warten did not tell you that he had taken up this note due to Bamberger, Bloom & Company for upwards of $4,000 due in December, giving his note due in the future for it, and that he had settled his account in the same way——

A. He did not, sir.

Q. You heard Warten's testimony, did you not?

A. Yes, sir.

Q. Then what he said in reference to his having told you of his giving these notes in extension was not true?

A. I did not hear him say it.

Q. When Warten came back from Louisville did he show you this statement showing his account?

373 A. No, sir; he never showed me a paper of his in his life except my own papers.

Q. And he did not tell you that he had gotten an extension, but that they had not extended the indebtedness?

A. Yes, sir.

Q. What further conversation did you have with Warten at that time?

A. I don't know what all we said.

Q. Didn't you say that you urged him to make a settlement with you; that somebody might attach him?

A. Yes, sir. He said he would try to get up the money and pay me and keep them from doing it.

Q. Who did he refer to?

A. To Bamberger, Bloom & Company, of course.

Q. Was not the arrangement between you and him that he was to let you know when you were to come to Athens and you were to come and he would have a settlement with you?

A. No, sir.

Q. How did you happen to go there on the 9th of January?

A. He telegraphed for me.

Q. Have you got that telegram?

A. I gave them to Judge Brickell and I think he put them in his pocket and went off with them.

Q. You went to Athens on January 9th in answer to a telegram from Warten?

A. Yes, sir.

374 Q. What did the telegram state?
A. Just send Miller to Athens.
Q. You knew what he wanted, didn't you?
A. Knew he wanted me for something, but did not know what.
Q. You knew that he did not want to see you about anything but this debt?
A. That was all.
Q. What time did you reach Athens?
A. I got there about 11 o'clock on Saturday.
Q. Did you go at once to Warten's place of business?
A. My recollections is that I went right to the house; went in the door the nearest to the depot and then walked out.
Q. Did you see Warten in there?
A. I saw him, but he was busy, and I think I walked out and walked round and spoke to two or three people and went back to the store and asked him what he wanted.
Q. Didn't you know then that this note for $1,000 that he had given to Bamberger, Bloom & Company would fall due on January 15th?
A. I did not know anything about his business. I didn't see his books.
Q. Do you say he did not tell you that he had given a note to Bamberger, Bloom & Company that fell due on January 15th?
375 A. He didn't tell me but mighty little about his business, I'll tell you. He told me that he wanted me to buy his stock of goods there to pay my debt and some notes and accounts; that he was gone up.
Q. Was that the way he began the conversation?
A. Yes, sir.
Q. Whilst you were there in November did he say anything about making a general assignment?
A. No, sir.
Q. Did he in December while you were there?
A. No, sir.
Q. When you went there that day did he tell you anything about making a general assignment for all his creditors?
A. No, sir.
Q. There was nothing said between you in reference to that?
A. No, sir.
Q. Not a word was said about McGavock having been spoken of to be the trustee under that general assignment?
A. Not a word about that general assignment at all.
Q. Who was present when Warten made that proposition to you?
A. Nobody.
Q. It was in his storehouse?
A. Yes; right at the foot of the steps.
Q. Was it in the daytime?
A. Yes, sir.
376 Q. Did you accept his proposition then and there?
A. No, sir; I went out and walked round a little bit, and

went upstairs and inspected the stock of goods and walked round, and then went to him and accepted his proposition.

Q. Did you see the mules?

A. I did not.

Q. The Elkmont stock of goods, did he have the invoice of that?

A. Yes, sir.

Q. Did he show it to you then and there?

A. Yes, sir.

Q. When did you go to see Mr. McClellan?

A. I went out then to get a lawyer. I wanted somebody to collect for me and get up the papers. I would have went for you—you were our lawyer up here—but you were not there, and finally Mr. McClellan was recommended to me and I went to his office, and he said he could not do it, but that he would draw up the papers in the night.

Q. What time of day was that?

A. In the evening some time.

Q. Before dark?

A. Yes, sir.

Q. You told Mr. McClellan what Warten's proposition was to you with reference to the sale of the goods?

A. I told him that night, but not then. I told him I
377 wanted him to draw up a bill of sale to Schoolfield, Hanauer & Company.

Q. Did Warten go with you to Mr. McClellan's office?

A. Yes.

Q. Did he stay with you all the time you were there?

A. He did.

Q. Was there nothing said either by Warten or McClellan in reference to this general assignment?

A. No, sir.

Q. Neither of them that day, either in the night-time or in the daytime, said anything about a general assignment?

A. No, sir.

Q. When did you first hear of this general assignment?

A. Monday evening following this sale; the same day the papers were signed.

Q. Was that your first meeting with Mr. McClellan?

A. I met him in the evening and then that night.

Q. You knew of Mr. McClellan before that, did you not?

A. Yes; I had met him there in Athens on my trips, but did not know much about him as a lawyer.

Q. Who suggested to you to go to Mr. McClellan?

A. Mr. Warten said he was the best lawyer there.

378 Q. You say you thought of going to Mr. Sanders?

A. Yes; I thought of going to Mr. Sanders to get him to collect my debts. I knew a young lawyer was better than an old one on small debts; they would watch them closer.

Q. And it was at Warten's suggestion that you went to Mr. McClellan?

A. Yes, sir.
Q. You say these papers were drawn up on Saturday night?
A. Yes, sir.
Q. Why were they not executed that night?
A. I did not care about having them executed at night; that was all.
Q. Rather have them executed in the daytime?
A. Yes, sir.
Q. Did you have any apprehensions about it?
A. I never take any of that sort of papers at night, if I can help it.
Q. You knew that they would stand the fire better by being executed in the daytime, and that there might be some fire.
A. Yes, sir.
Q. These papers, then, were executed on Monday morning?
A. They were.
Q. Before 6 o'clock?
A. It was just before 6 o'clock. I just had time to get to the depot.

Q. Who had you informed in reference to this trade before
379 you executed these papers?

A. No one.
Q. No one knew anything about it, so far as you know, except Warten, McClellan, and yourself.
A. No; so far as I know.
Q. And you did not inform any one about it until these witnesses were called?
A. No, sir.
Q. Was the paper read to them?
A. Yes, sir.
Q. And Warten signed in their presence?
A. Yes, sir.
Q. Then you say you went to Tennessee?
A. Yes, sir.
Q. Why did you go?
A. To buy some claims for the Schoolfield-Hanauer Company.
Q. I understood you to say that you had, in fact, made the trade at Athens on Saturday?
A. We had agreed to it, but they had not been delivered until I went to Tennessee.
Q. You went up to Tennessee to sign the papers?
A. Yes, sir.
Q. And that was to evade the laws of this State in reference to a corporation doing business here without having an agent in this State?
A. Yes, sir.
Q. When you came back to Athens you opened the doors of the store, didn't you?

380 A. Yes, sir; but I didn't sell any goods.

Q. People came in and you made sales there?
A. I made about two sales, I think.
Q. How many clerks did you employ?

A. No one but McGavock.
Q. When did you employ him?
A. That morning of the 13th.
Q. For what length of time?
A. I told him that I wanted him to keep on there at the same wages that Warten was paying him. I didn't know how long I would keep him. I didn't know but what I would sell out in a week. I had to have him, anyhow, to collect debts.
Q. For what length of time did you employ him?
A. There was no contract until afterwards.
Q. When was that?
A. Two weeks afterwards, I reckon. He wrote me that he would not stay there on an uncertainty; that I had to hire him by the year or he wouldn't stay.
Q. And you hired him by the year at what salary?
A. $1,000.
Q. Previous to that you had hired him temporarily at the same rate Warten had been paying him?
A. Yes, sir.
Q. Did you employ any one else?
A. Not then. My son got there the next day, and we did
381 not do any *any* business until we were attached, and there was five days after we were attached before we opened up and got the bond.
Q. When did you employ Warten?
A. Some time after that.
Q. How long after?
A. I think it was two or three or four weeks. I don't know.
Q. What else did you do with reference to carrying on that business?
A. As soon as I replevied it I threw open the doors and put them out there at cost; sold a good many, and I saw they could not get along and I hired Mr. Markham.
Q. What did you pay him?
A. A dollar a day.
Q. Did you hire anybody else?
A. I hired a young boy there. I expected to run it for eight or ten days and I only hired him for eight or ten days.
Q. Did you know of this assignment when you employed Mr. McGavock?
A. No, sir; I hired him before I went to Tennessee.
Q. Before you made this arrangement with him or engagement with him did you know he was the assignee?
A. Yes, sir.
Q. When did you first find that out?
A. On Monday evening.
382 Q. And you knew that the duty devolved upon him of collecting the debts?
A. Yes, sir.
Q. And you knew something about the number of those debts?

A. I did not know anything about them; I never seen them; I heard there was about $500,000 of notes and accounts.

Q. When you employed him did you require him to give up his assigneeship?

A. No, sir.

Q. You continued to employ him at the rate of $1,000 a year and he continued to be assignee?

A. Yes, sir.

Q. What rent did you pay for that building?

A. I think $500 a year.

Q. Did you assume the payment of it from January 1st?

A. I assumed payment from the time I took it; I did not want to rent it for a year, but he would not let me have it any other way.

Q. Have you paid it?

A. Yes; up to the time we sold out.

Q. Have you got the receipt of Dr. Westmoreland for the rent?

A. I have not.

Q. Who has?

A. I don't know; it was paid there at the store.

Q. Where are the books of account of the Athens store?

A. At Athens, I think.

383 Q. I suppose it is absolutely essential to Schoolfield, Hanauer & Company that they should be at Athens?

A. It was nothing but little memorandum books, anyhow; it is nothing to us; I never saw the books.

Q. This statement that you furnished here from the books of the corporation shows simply the cash that was sent to the Schoolfield-Hanauer Company from the Athens store?

A. Yes, sir.

Q. It don't show how much was sold and what for?

A. It shows all that we received from it.

Q. It don't show how much money anybody there received?

A. No, sir.

Q. It don't show how much Warten received?

A. No, sir; it don't show anything except what was sent down to the house.

Q. When you employed Warten how much did you agree to pay him?

A. $100 per month.

Q. Did you know then that he was in the employ of the assignee at $6 a day?

A. No, sir.

Q. Did you know he was in the employ of the assignee at all?

A. I knew he was to make out a statement; I heard that

384 before I left there; but I didn't think it would take him more than 4 or 5 days; I don't see how it took 30 days to make out a statement, nohow.

Q. Maybe at $6 a day it would take him longer?

A. Maybe so.

Q. So you employed Mr. Warten & Mr. McGavock because of

their experience and skill as mercantile men in managing the business?

A. I employed them simply because I could not do without them.

Q. You found out by June that it was not paying you anything and you sold out?

A. Yes; I don't think if I had been there I would have had so many expenses.

Q. When did you say you employed Mr. McGavock by the year?

A. Two or three weeks, I think, after I commenced there.

Q. When you made this trade with Warten, representing his wife, did you know of any means Mrs. Warten had?

A. I did not; but they proposed to pay so much cash.

Q. How much cash?

A. They proposed to pay $3,200.

Q. What was the aggregate amount they were to pay?

A. $7,600.

Q. You stated in answer to a question of Mr. Poston's that
385 there was no understanding or arrangement between you and Mr. Warten, either express or implied, by which he was to remain there in the management of that business. But the fact is that he did go back there in your employment and remained until you sold out to his wife.

A. Yes, sir; he did.

Q. Mr. Poston also asked you if there was any understanding or agreement between you, either express or implied, that you were to let him or his wife have this property in the future

A. There was not.

Q. But the fact is that you did let her have it.

A. I did, but would have let anybody else have it.

Q. In the trade with Mrs. Warten you say you did not know of her having any means. Did she have any commercial credit?

A. Not a bit that I know of.

Q. She paid you $3,200 in cash and you took her notes for the balance?

A. I did, sir.

Q. Did you take any security for it?

A. I did not. Part of the notes have been paid.

Q. You took part of that in payment of the land Warten had conveyed to you?

A. Yes, sir.

386 Q. And you gave her an absolute deed for that land and sold it to her at exactly the same price he had sold it to you?

A. Yes, sir.

Q. And you sold her this stock of goods and these debts for the balance of this indebtedness and she paid you about $2,000?

A. Yes, sir.

Q. And you took her notes for the balance without security. Did you take those notes from her on her credit?

A. I took them on her credit. I was satisfied Henry Warten would manage the business so it would be paid. I knew he was a safe business man; if he managed for her, he would pay it.

Q. Where did she get the means?

A. I suppose she got credit. I don't know.

Q. Don't you know that if anybody would give her credit it would be on the faith of her husband?

A. I don't know. I would sell good- on credit with Warten managing her business. I sell to a good many married women.

Q. But you would not unless he was managing?

A. No, sir; because she did not know anything about business.

Q. I believe you stated in your examination-in-chief that
387 the business of your firm and of the corporation was that of cotton commission merchants and wholesale grocers?

A. Yes, sir.

Q. Is it not a fact that in your cotton commission business you advance money during the season to your customers in the country with the understanding that they are to ship you their cotton in the fall?

A. Of course.

Q. Was it not your understanding with Warten that he was to ship you all the cotton he got there?

A. It was.

Q. Did he do it?

A. No, sir.

Q. Then, he violated his contract with you?

A. There is mighty few of them that don't do that, that ever I have struck; it is mighty few merchants or farmers either that ship you all the cotton they promise.

Q. If you would not have sold these goods or this property to Mrs. Warten on a credit except you understood her husband was to manage the property for her, why would you not have sold them to him on a credit?

A. Because they would have been attached, and, more than that, even Dun's agency would give her a credit after she had paid $3,000.

Q. Don't you know what that agency says about her?

388 A. No, sir; I could get a special report on her by having to subscribe for it.

Q. To whom was the $3,200 paid?

A. Walter Miller.

Q. You do not know, then, how it was paid?

A. It was paid in Athens.

Q. And you were not there?

A. No, sir.

Q. On this statement of the Athens store account with the corporation I don't see here any cash from Mrs. Warten, except cash for real estate, $1,250, and cash on account, $750.

A. There is the cash that we paid that Louisville debt with, $1,227.43, making in all $3,227.43.

Q. You say $3,200 and $7,600—you mean just in round numbers?
A. Yes, sir.
Q. Did you employ Warten to go to Louisville to buy goods to replenish this stock?
A. No, sir.
Q. How much did your son pay him for that?
A. Nothing. He was in my employ.
Q. When you employed him was it contemplated that he should go to Louisville and replenish the stock?
A. I did not expect him to do anything. My son was manager and he could do just as he thought right.
389 Q. You did not give any instructions about replenishing the stock?
A. I told him to do whatever he thought best.
Q. That telegram from Warten to you that they want $3,000, you understood that that referred to Bamberger, Bloom & Company?
A. Of course, because the other men, Hess, Henle & Company, had already agreed to it.

Re-examination by DAVID POSTON, Esq.:

Q. In these bills of sale, $1,250, $750, and $1,227.42, they show the transaction between you in regard to that purchase?
A. Yes, sir.
Q. And when you say $3,200 and $7,600 you mean round numbers?
A. Yes, sir; not exactly.
Q. Your agreement in that letter was that these three houses should make the extension?
A. Yes, sir.
Q. And that letter was addressed in that way in order to get the rest?
A. Yes, sir.
Q. You say when you went into Athens on the morning you went in Warten's store through the back door. How was that in regard to the depot?
A. It was nearest the depot.
Q. How far from it?
A. I suppose 50 yards.
Q. In other words, the back door being open, you walked in?
390 A. Yes, sir.
Q. Now, something was said about the books of the Athens store. Did they contain the accounts you sold Mrs. Warten?
A. I suppose they did. I never saw the books.
Q. You have not the books in your possession?
A. No, sir.
Q. The money that was sent from the Athens store to the house did not pay the expenses?
A. No, sir.
Q. They were paid by your son?
A. Yes, sir.

Claimants then introduced WILLIAM H. SYKES, who testified as follows:

Direct examination by R. A. MCCLELLAN, Esq.:

Q. Were you subpœnaed here for the plaintiffs or the claimants?
A. For Bamberger, Bloom & Company.
Q. Are you a citizen of Athens, Alabama?
A. Yes, sir.
Q. How long have you been living there?
A. About 12 years.
Q. Are you acquainted with those houses or property about Elkmont Springs, Tennessee?
A. Yes, sir.
Q. How far is that from the Alabama line?
391 A. Not very far; I think about two or three miles.
Q. Did you have a cabin up there?
A. I had one there.
Q. Are you acquainted with the lot Henry Warten had there?
A. No; I never saw his house there; it was built after I left there.
Q. What size was your lot?
A. I don't remember the size of it; the lots were all small.
Q. Were they of uniform size?
A. Yes, sir; on that row.
Q. What did you give for your lot?
A. $100.
Q. Did you have a house on your lot?
A. I had one, but sold it.
Q. What sort of house was it?
A. Frame house.
Q. Do you know what Warten gave for his lot?
A. No, sir.
Q. What would you have put his lot at last January?
A. I don't know the lot he had there. I know it was in a certain row; he said it was in the same one mine was in.
Q. What would that have been worth last January?
A. I don't know except by what I sold mine for. I sold it for $225.
Q. What sort of house was yours?
A. It was a weather-boarded frame house.
Q. Was it ceiled?
A. No, sir.
Q. What sort of chimney did it have?
392 A. Didn't have any.
Q. Have any of them got chimneys?
A. Yes; some of them.
Q. Was your lot further from or nearer the main hotel there than his lot?
A. I don't know where his lot was, except from what he told me.
Q. Where was it, then?

A. I think about three lots from where mine was, further from the hotel.
Q. Was the hotel the center of the village there?
A. Yes, sir. I boarded at the hotel and lived in the cabin.
Q. Cabins are put round in the vicinity of that hotel?
A. Yes; most of them at the east of the hotel.
Q. What would a lot the size of yours three block- from the hotel, with a house on it, have been worth on January 13th?
A. I suppose as much as mine was—$225.

Cross-examination by MILTON HUMES, Esq.:

Q. How much farther is his lot from the hotel than yours?
A. Two or three blocks.
Q. How many steps would that be?
A. I don't remember. The side of the square is about 50 feet.
Q. That would be about 150 feet. What difference would that make in the value or the price?
393 A. I think those on that row are all the same price.
Q. You think that would not make any difference?
A. No, sir.
Q. You say you do not know anything about what sort of house was put on his lot?
A. No, sir.
Q. It was a newer house than yours?
A. Yes, sir.
Q. What is your house covered with?
A. Boards.
Q. You don't know whether his house was covered with shingles or boards?
A. No, sir.
Q. Was your chimney made of dirt and sticks?
A. I did not have any chimney to my house.
Q. It was a summer house?
A. Yes, sir.
Q. Did you have any door?
A. Yes; I had a door.

Plaintiffs make witness their witness.

Q. I believe you stated that you were engaged in business at Athens and have been for some years past?
A. Yes, sir; I have lived there for about 10 or 12 years.
Q. In what business have you been engaged during that time at Athens?
A. The mercantile business.
Q. And you also purchased cotton, did you not?
394 A. Yes, sir; I have been in the cotton business for 2 years past, but not in the mercantile business.
Q. You are well acquainted with the trade of Limestone county, are you not?
A. Yes, sir.

Q. You were in business as a merchant at Athens at the time Warten failed, were you not?

A. Not at that time. I was in the bank and in the cotton business.

Q. Buying cotton on the streets?

A. Yes, sir.

Q. Was Warten there at that time?

A. He bought cotton during the fall there—a short time before he failed.

Q. Did he buy any cotton there afterwards?

A. He bought one or two lots out of the warehouse that belonged to Yarbrough. He went to the warehouse and sampled the cotton. I don't think he was there when it was weighed out. Mr. Miller paid for it and settled with Yarbrough at the bank.

Q. How many bales were there?

A. 78, I think.

Q. When was that; how long after the failure?

A. A short time; I don't remember.

Q. You say Warten bought the cotton & Miller paid for it?

A. He sampled it and graded it and Miller was there.

395 Q. Was Warten there buying other cotton about that time?

A. I don't think he bought any cotton off the yard. If it was, it was only a few bales, and Miller seemed to control it.

Q. He was engaged in buying cotton there afterwards?

A. I think he didn't buy any cotton there except a few bales off the wagons. He was not out in the market as he had been before.

Q. That lot of cotton you called the Yarbrough or Witty cotton?

A. No, sir; Witty had 50 bales, I think.

Q. Did you see Miller pay for that?

A. I saw the draft.

Q. Were you bidding for part of that cotton?

A. Yes; I bid on the Witty cotton.

Q. And Warten got it?

A. Yes, sir.

Cross-examination by R. A. McClellan, Esq.:

Q. I believe you said he did not buy any cotton after he broke as he did before?

A. No; he was not out in the yard.

Q. The cotton he did buy was for Miller?

A. Those two lots were. I don't remember about the other cotton.

Q. You say there was other cotton bought on the wagons?

A. Miller drew checks on the bank for it.

Q. What connection did you have with the bank?

396 A. I was vice-president.

Q. As far as you know, Warten never bought a bale or paid for a bale after he broke, for himself?

A. No; I don't know of any.

Q. Was he or not an experienced man in sampling cotton?
A. Yes; he is considered a good man in cotton.
Q. Did you ever ask him to compare cotton for you?
A. Yes, sir.
Q. If I understand you there was a lot of cotton there that he sampled?
A. Yes; he did the grading.
Q. Was or not he there as a clerk for Mr. Miller for some time after he broke, three or four months?
A. Yes, sir.
Q. Did Schoolfield, Hanauer & Company have an account with your bank?
A. Yes, sir. (Identifies one of their bank books.)
Q. Have you ever bought or sold any old stocks of general merchandise in a lump in that county?
A. Yes, sir.

Plaintiffs object to this question and the answer thereto because the testimony is illegal, irrelevant, and inadmissible. Objection overruled. Plaintiffs except to the ruling of the court.

397 Q. What would be a reasonable discount below cost of a stock of goods, wares, & merchandise in the town of Athens that had been running eight years, paid from time to time, according tc the circu-stance of the business?

Plaintiffs objected to this question on the grounds last above mentioned.
The court overruled said motion, and to this ruling of the court the plaintiffs duly excepted.

A. I sold my business out there. Mine consisted of groceries, hardware, and staple dry goods. I sold at 15 per cent. off of the face of the invoice. I sold the entire stock.

Plaintiffs objects to answer for same reason. Objection overruled & plaintiffs except.

Q. Would or not there be a much greater discount off of a stock of dry goods that had been running eight years?

Plaintiffs objected to this question on the same grounds as above, and, further, because witness has not been shown to be an expert. Objection overruled by the court, and to this ruling of the court the plaintiffs excepted.

A. I don't know. It would be owing to circumstances.

Plaintiffs object to the answer for same reason. Objection overruled & plaintiffs except.

Q. Would there or not be a much greater discount off of an old stock of goods in Athens that had been running eight years, including dry goods, notions, and fancy things, sold in bulk, with
398 few new goods in there?

Plaintiffs object to this question on same grounds as above. Objection overruled by the court; to which ruling plaintiffs except.

A. It might be worth 50 cents on the dollar and might be worth 75; it is owing to how old they are and what they are. I don't know anything about the stock of goods you speak of.

Plaintiffs object to answer for same reason. Objection overruled & plaintiffs except.

Q. You put the value of these claims at $2,500. Did you or not put that estimate on it as worth that much at all hazards, under all circumstances?

A. I think we put it at about $2,800, and there was an offset of about $300, and we settled at $2,500.

Q. Did you put that down as what they were worth under all circumstances?

A. We picked out such as we thought were passable.

Q. Such as could be collected by law?

A. Yes, sir.

Q. Were or not over $30,000 of those claims and debts made with Warten last year by citizens of that county?

A. I don't know.

Q. Then you did not know whether they were one year old or 6 or 8?

A. No, sir.

399 Q. Then, to take those accounts over $30,000, not a year old, on citizens of Limestone county, to be collected in the usual way, by giving time if necessary, or in making arrangements usually made under such circumstances, is it or not a fact that $15,000 or $20,000 or $30,000 might have been realized out of those claims?

A. I don't think so.

Q. How much do you think could have been realized?

A. I think, properly managed, 25 per cent. or, maybe, more than that.

Q. What was the nominal amount of those claims?

A. I think $52,000.

Q. Is it your opinion that not over 10 % of debts created in Limestone county last year with merchants could be collected whether they broke or not?

Plaintiffs object to this question. Objection overruled. Plaintiffs except to this ruling of the court.

Q. What per cent., in your opinion, has been or will be collected from the people of that county by the merchants in Athens for goods sold there last year—take anybody and everybody?

A. I think most of the debts will be collected that were made last year on parties that are worth anything at all. A great many of them are well secured with mortgages.

400 Q. Is it not a fact that a great many men out of whom money could not be made will pay what they can?

A. Yes, sir.

Q. Is it not a fact that a great many of those men will pay their debts?

A. I don't know about those; I just saw the list.

Q. Did or not Henry Warten have as good a trade as any merchant in Athens?

A. He had some very good; others bad.

Claimants then introduced WALTER MILLER, who testified as follows (recalled):

Direct examination by DAVID POSTON, Esq.:

Q. What books did you keep in the Athens store while you were there?

A. A cash book and a kind of blotter.

Q. Where are those books?

A. I carried one home and left the other with Mrs. Warten when I sold out to her. (Identifies cash book.)

Q. What is the endorsement on the back of that cash book?

A. The Schoolfield-Hanauer Company, Memphis, Tennessee.

Q. That contains the bulk of the business of the concern?

A. Yes; the cash sales and what I paid out for clerks and the expenses in general and what I paid myself.

Q. What became of the other books?

401 A. I left them with Mrs. Warten, the book that had the accounts I had sold to them.

Q. Did you have down there Mr. McGavock?

A. Yes, sir.

Q. Did you have Warten's account?

A. Yes, sir.

Q. This book had all the cash you paid out?

A. Yes, sir.

Q. You don't know anything about the other book at all?

A. No; Mrs. Warten said she left it there.

Q. You had no further interest in it?

A. No, sir.

Q. In whose handwriting are the entries there?

A. Some of them are in mine and some McGavock's and good many in Warten's.

Q. Just entries made by the clerks as they made sales?

A. No, sir; McGavock made some while I was away, and Warten helped me out in it. It was the first one I did. He did the writing. I would tell him how much cash I had taken in and he would put it down on the book.

Q. I see the name Estes on there; was he one of your clerks?

A. Yes, sir.

Q. I wish you would take off the entries there on the first three or four pages, what entries you made.

(Witness explains it to the jury.)

Cross-examination by MILTOM HUMES, Esq.:

402 Q. How many books of accounts did you keep there?
A. I kept that and another book.
Q. What did you have in the other book?
A. The accounts of different merchants and other parties I sold goods to.
Q. Parties to whom you sold on credit?
A. Yes, sir.
Q. That book you left with Mrs. Warten?
A. Yes, sir.
Q. You say you did not know anything about book-keeping and you got Warten to help you?
A. Yes, sir.
Q. And that book there just contains entries of cash; does it show cash received?
A. It does.
Q. For each day?
A. Yes; nearly every day; some days we didn't make any cash sales. All I got in and all I paid out was put down in that book.
Q. Were you there all the time from the time you took charge until you sold out to Mrs. Warten?
A. I took two trips to Memphis and one to Birmingham.
Q. Who had charge during your absence?
A. Mr. McGavock and Warten both had charge. When I was in Birmingham Warten had charge; McGavock was with me.
Q. How long did you stay in Birmingham?
A. Two or three days.
403 Q. I believe you stated that in the sale you made to Mrs. Warten you took no invoice of the stock of goods?
A. No, sir.

The claimants here closed their testimony.

Plaintiffs reads deposition of W. C. STEWART as follows:

Int. 1. Do you know Henry Warten? If so, in what business was he engaged in the year 1889?
A. Yes, sir; I know him; he was engaged in merchandising.
Int. 2. Do you remember when Warten closed business? If so, did you or not have a conversation with him about the day after he closed business? If so, state who was present, where you had said conversation, and all that was said in said conversation.
A. In Jan. or Feb., 1890, I did have a conversation with him, a day or two after he closed business—don't recollect who was present—in Gem saloon in Athens. He, Warten, said to me not to be in a hurry about making arrangements to get anybody to furnish me; thought he would be all right in a few days; said he expect- he was better off than some that were not closed up.
404 Int. 3. Had you or not been trading with him for several years? If so, about how much a year did your dealings with Warten amount to?

A. Yes; $1,200 or $1,500.

Int. 4. In said conversation what did he say to you, if anything, about making payment of your account to him? How did you arrange said account with him?

A. He said that I had stuck to him and that he would stick to me and see that I was not bothered. There was no arrangements made.

Int. 5. Do you know Mr. Miller, of Schoolfield, Hanauer & Company? If so, did he take any part in settling said account with you?

A. I do; yes.

Int. 6. Relate in detail all about how said account was fixed by Warten, and state whether or not Miller, of the firm of Schoolfield, Hanauer and Company, had anything to do with fixing it; and, if so, how.

A. By my release of an account on a negro who hired on my place; not at that time.

Int. 7. Did you or not about the date of said conversation (if you had such conversation) release your landlord's lein on a couple of mules which you sold to a darkey on your place and get credit on your account for such release, and did not Warten charge it
405 up to the negro, and did he or not consult said Miller before making this arrangement with you, and did not Warten and Miller fix up the papers for said release and say to you at that time, "The nigger will be furnished," and is it or not a fact that they furnished him last year? Is it not a fact that, in pursuance of the agreement had with you at that time, Warten and Miller furnished the negro?

A. I did release my lien on a couple of mules and crop, except rent. I did get credit for the release. He charged it to the negro. He consulted Miller. Warten and Miller fixed up papers for said release. They said the negro would be furnished and they did furnish him this year.

Int. 8. State fully and particularly what release as landlord or otherwise you executed to said Warten or to Warten & Miller, and state what induced you to make said release, who you executed it to, and all you know about it.

A. I released two mules & crop except my land rent, $165.00, in order to pay my account executed to Warten & Miller.

Int. 9. State fully all that was said to you by both Warten and Miller in reference to said release on said mules and on the crop of said negro.

A. Warten & Miller said they would furnish said negro
406 for this year and did furnish him, and have received some cotton this fall.

Int. 10. State anything else you may know of benefit to plaintiff.

A. Don't know anything else.

Plaintiffs then introduced JOHN T. STEWART, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. Where do you live, Mr. Stewart?
A. 6 miles southeast of Athens.
Q. How long have you been living there?
A. I was raised there.
Q. In what business have you been engaged?
A. I am a farmer.
Q. Do you know Henry Warten?
A. Yes, sir.
Q. Did you have any conversation with Warten about the time his house was closed there?
A. Yes, sir.
Q. When was that?
A. A few days after he was closed up; about four days after.
Q. Where was it?
A. Right in the door there where he was selling goods; he was standing in the door and I was on the pavement.
—. To whom was your account transferred?
A. To Schoolfield, Hanauer and Company.
Q. Did they dun you for it?
A. Yes, sir.
407 Q. Was it the corporation or the firm?
A. I was notified by the company.
Q. Did you go to the store to see about it?
A. Yes, sir.
Q. Who did you see?
A. Henry Warten.
Q. Did you fix it up with him?
A. Yes, sir.
Q. What did he say to you in that connection, if anything, about fixing up the account?
A. He sent Mr. Miller to me and I told Mr. Miller that Warten owed me some, but that I owed him more than he owed me, aand Miller told me anything Warten done was all right.
Q. Did you go to Warten?
A. Yes, sir.
Q. What did he say and do?
A. He paid me off what he owed me off of the account and I settled it with him.
Q. What did Mr. Warten say to you?
A. I went to him and said to him that he ought not to do me that way; that he ought to have settled with me before he transferred the account, and he said, "You tell them to kiss your ——."

Cross-examination by R. A. MCCLELLAN:

408 Q. When was it you had some little difficulty with Warten—some hard words?
A. Nearly two years ago.

Q. When was it you had the settlement with him?
A. About six weeks after he closed up there.
Q. Did you have one or more than one talk with him?
A. I had three.
Q. At what time were they?
A. The first one was a few days after they closed him up, and the next one was when I got the notice from Schoolfield, Hanauer & Company that my account had been transferred.
Q. Have you got that notice with you?
A. No, sir.
Q. Is it or not a fact that the only difference between you was that you claimed that there was a mistake of $9 in the account?
A. No, sir; there was $11. That was money I paid for picking cotton for him.
Q. Then the only matter was, you wanted credit for that?
A. Yes.
Q. Was that for cotton seed?
A. No, sir.
Q. What was it about?
A. Money I had paid for picking cotton.
Q. Did he have any cotton to pick?
A. My hands had cotton to pick, and they owed him.
409 Q. It was your crop and he got you to pick your own cotton?
A. Got me to pay for picking it.
Q. Did or not Walter Miller get after you two or three times for this debt that was transferred?
A. One time.
Q. Did he or not tell you he would have to bring suit for it if it was not paid?
A. No, sir.
Q. You had but one settlement with Warten?
A. Yes; only one.
Q. Did he not show you this statement when you made the settlement?

(Handing witness the following:)

ATHENS, ALA., *April* 14, '90.

Mr. J. T. Stewart:

As you promised to come in Tuesday and settle your account, and I had to go to Birmingham, you will pay Mr. Warten and he will receipt for us.

WALTER MILLER,
For Schoolfield, Hanauer & Co.

A. No, sir.
Q. Did he not offer to do so, and you said, "Let the damn paper go"?
A. No, sir.
Q. By what authority did you make the settlement with Warten; was it or not that power of attorney?

A. No, sir; he did not give me that. Mr. Miller told me to pay it over to Warten.

410 Q. Had not Walter Miller been after you on two or three occasions before that?

A. No, sir; Mr. Miller had and young Mr. Miller once.

Q. You said Mr. Miller told you to make the settlement with Warten?

A. Walter Miller did. I have never seen this paper before.

Q. Where was it he used that vulgar language?

A. On the corner near his house.

Q. Did you ever tell Warten or Walter Miller or H. G. Miller or any of the attorneys in this case what your evidence would be in the case?

A. No, sir.

Re-examination by MILTON HUMES, Esq.:

Q. You were subpœnaed as a witness here at the last term of court?

A. Yes, sir.

Q. And you were in attendance as a witness in this case for the plaintiffs?

A. Yes, sir.

Q. And you have been in attendance at this term for some days?

A. Yes, sir.

Plaintiffs then introduced F. S. WOOD, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

411 Q. Where do you live?

A. Athens, Limestone county, Alabama.

Q. Are you the assignee at present under the general assignment of Henry Warten?

A. Yes, sir.

Q. Who preceded you as assignee?

A. Mr. McGavock.

Q. When were you made assignee?

A. It was in March, about the 14th.

Q. Did Mr. McGavock turn any money over to you?

A. He did.

Q. How much?

A. It was only a dollar or so; not as much as $3.

Q. How much did he collect and what did he do with what he did collect?

A. I reckon it was $1,200; maybe more.

Q. Did Warten get the money or any part of it collected by McGavock; if so, how much?

A. I could not state the amount exactly. He paid him over some for his exemptions.

Q. How much?

A. About $800.

Q. He turned over to you a dollar or two?
A. Yes, sir.
Q. What books came to your possession as the assignee?
A. These two books (showing them) and the sale book.
Q. Do any of the books turned over to you show the liabilities of Warten?
412 A. No, sir.
Q. Have you any knowledge or experience as a book-keeper?
A. I have kept books.
Q. Have you ever had in your possession as assignee any book showing Warten's liabilities?
A. None, sir, except those sale books and these books.
Q. Do any of them show his liabilities?
A. No, sir; not entirely. I have had statements sent in from the parties he owed.
Q. What do these books show?
A. They show some transactions he had with different parties. He kept double entry and I kept single entry.

Cross-examination by R. A. McClellan, Esq.:

Q. As far as you have seen you have not discovered all of his liabilities?
A. No, sir.
Q. May they not be there without you having seen them?
A. Yes.
Q. Is not Warten a much more expert book-keeper than you?
A. Much more, sir.
Q. How much do you think, with reasonable efforts, can be realized from the $53,000 worth of assets turned over to you this year and next year?
413 A. I possibly might get 25 % by working it up close, with the present light before me.
Q. About what will you probably get with that sort of management or the good management of anybody?
A. I think I ought to get in the neighborhood of 25 %.
Q. What do you think Henry Warten might have realized up there if he had been able or continued business this year?
A. My impression is that he could have collected a good deal more than anybody else could.
Q. 25 % would be about $12,000?
A. Yes, sir.
Q. Is there anything there on that book about Bamberger, Bloom and Company on three or four pages?
A. Yes, sir.
Q. Then this book does show all of his indebtedness to that firm?
A. Yes, sir; it shows Bamberger, Bloom and Company and Schoolfield, Hanauer and Company and Hess, Henle and Company. The reason why I did not see that is because he kept his books different from me. He kept double entry and I kept single entry.

Q. You said that that money that was paid to Warten
414 by McGavock was part of Warten's exemptions under the general assignment?
A. Yes, sir.
Q. You are not certain about the amount?
A. No, sir.
Q. Is it not a fact that he got only $500?
A. Yes, sir.

Re-examination by MILTON HUMES, Esq.:

Q. How much have you collected?
A. I have collected about $400 in money.
Q. Have you collected more than that?
A. I have some good claims, amounting to $1,000 or $1,100.
Q. How much have you got on hand in cash?
A. Very little on hand; what money I have collected has been about consumed in expenses.
Q. You have not declared any dividends for the creditors?
A. No, sir; there is hardly enough to support the assignee in this case.
Q. Don't you know that it is not possible for you to pay anything like 25% to the creditors in that assignment from the present outlook?
A. I could not say about 25%, because I could not tell about the expenses.
Q. And that 25% would be expenses?
A. Yes, sir.

415 Recross-examination by R. A. MCCLELLAN, Esq.:

Q. You spoke of $1,000. You mean that you have $1,000 in addition to the assets that you originally had?
A. Yes, sir.
Q. Is it not a fact that the time of the year has just about come when you can make collections?
A. Yes, sir.

Plaintiffs then introduced G. W. RAISLER, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. Where do you live?
A. Athens, Alabama.
Q. How long have you lived there?
A. About 35 or 36 years.
Q. What is your business?
A. At present I am postmaster.
Q. Do you know Mr. Miller, of the firm of Schoolfield, Hanauer & Company?
A. Yes, sir.
Q. How long have you known him?

A. Not more than a year or a year and a half, perhaps.

Q. Did you have any conversation with him, and another gentleman being present, at the hotel at Decatur recently?

416 A. Yes, sir; I think it was on Sunday last—Sunday week.

Q. Who was there?

A. Mr. H. G. Miller and another gentleman, I think. I don't know who it was.

Q. What hotel was it?

A. The Bismarck hotel.

Q. Did Mr. H. G. Miller say anything in reference to this suit?

A. Yes, sir; he brought the suit up and said that he regretted very much that he had gone into this lawsuit. He remarked that he had the utmost confidence in the business capacity of Mr. Warten and he thought that he could pay out nearly if he was let alone. He was satisfied when he bought his goods that he would lose at least $7,000 or $8,000, and he thought he could do much better if he would continue in business, and that he was owing him $27,000, but that he was willing and had offered him $3,000 more if he wanted it. It looked to me like he wanted to impress upon me the confidence he had in Warten as a business man.

Q. When did he say he had offered that to him?

A. I don't recollect; I don't know whether he named it.

Q. State if he said anything else in that connection in reference to a conversation that occur-ed between him and Warten before the transaction between Warten and Schoolfield, Hanauer and

417 Company.

A. I think he said he was telegraphed for or received a dispatch (I did not pay much attention to it, anyway), asking him to come up to Athens, and when he come up there Warten told him the burden was too heavy for him; that he couldn't stand it; that if he didn't buy him out he would have to make an assignment or something. He didn't want to do it, he said, from the simple fact that he knew he could do much better by letting him alone.

Q. Was it in that connection that he said he had offered him $3,000?

A. It was at the same time, but I don't know whether it was in that connection.

Q. He said that Warten said if he did not buy him out he would have to make an assignment?

A. Yes; or he would have to sell out, or something like that.

Q. What else did he say in reference to this suit?

A. I don't know as I recollect anything else. We had a friendly conversation with him. At one time he mentioned a three-cornered fight, but I did not know what he meant by it, and I believed he remarked at the time, "If they put me on the stand I will tell what I know about this matter." There was no secret about it;

418 there was another gentleman sitting by.

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418 there was another gentleman sitting by.

Cross-examination by R. A. McCLELLAN, Esq.:

Q. If I understand you, he was speaking about what he owed him when he bought him out?

A. Yes. I think he said $27,000.

Q. It might have been $17,000?

A. Yes, sir; it might have been that.

Q. He did not speak of Warten owing him anything since that; he was talking about the settlement last winter?

A. No; I don't know whether he said anything about a settlement.

Q. He either was owing him that amount or he said at that time he offered to loan him $3,000?

A. Yes, sir.

Q. He spoke of having bought the property for his debt?

A. Yes.

Q. He said it would be better for him to go on in business?

A. Yes; he said that he was engaged in business and that he knew he would lose $6,000 or $7,000.

Q. Did he or not in that conversation tell you that he had rather give him $3,000 than break him up in business?

A. I don't know. He said he was a fine business man, and
419 he had the utmost confidence in his business capacity, and that he would have pulled through if he had been let alone, and then he brought up the $3,000.

Q. You don't know at what particular time it was he said he would let him have the $3,000?

A. No, sir.

Q. Do you know whether he did or did not let him have a great deal more than three thousand dollars last Christmas?

Q. If he has I don't recollect.

Q. He said he thought it would be better if Warten could have kept up his business?

A. Yes, sir.

Q. He said he had lost several thousand dollars?

A. He said, "I have fully lost $6,000."

Q. How far is your place of business from where Henry Warten's was?

A. When he first opened I was right across the street. I was on the northeast corner of the square and he was on the northwest corner; it is about 60 yards across the street.

Q. Were you occasionally in the store?

A. Yes; very frequently. I dealt with the house more or less since he has been in business.

Q. What kind of stock did he have?

420 A. When he first opened he commenced with groceries, but it touched dry goods. He kept two—one of dry goods and one of groceries. Both were full; he kept a very large stock then.

Q. If very few new goods were put in that stock last fall, what

ought they to have brought below cost, sold in bulk for cash, January 1st?

A. My knowledge of the dry-goods business is that there are some goods which we call staples which are always worth cost; for instance, calicoes and domestics; but there are a great many goods that have been run eight years that 50 per cent. off the cost would be a good price for.

Q. On an average what would that stock of goods of that character be worth?

A. Taking those that ought to bring full value and taking all things into consideration, I should think 15 or 20 per cent. off; I can't tell. I did not see his stock and don't know.

Q. Have you some idea about the character of customers he had last year?

A. No, sir; but I know from my observation that he was a very cautious man & did not sell goods carelessly.

Q. Would or not his customers average with other customers in town?

A. I suppose they would.

Q. Suppose his assets consisted of notes, accounts, and mortgages of the nominal value of over $50,000, over $30,000 of which
421 were debts made with him last year; with proper management from January on how much could be realized from that stock?

A. If he had the management himself I think more could be collected. I think he could have collected perhaps one-half of his indebtedness.

Q. What ought to be realized by a reasonably diligent trustee?

A. I don't know about his customers. I could not tell. I don't believe he would sell goods if he did not have security.

Q. If the amount of the indebtedness is about $50,000, what do you think?

A. I think perhaps one-third ought to be collected. I know of some of his customers that are perfectly good and could pay dollar for dollar, but how many I don't know.

Q. There was a failure of the cotton crop there last year, was there not?

A. Yes, sir.

Q. The next resourse of the people was the cotton crop of this year?

A. Yes, sir.

Plaintiffs then introduced W. L. MARTIN, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

422 Q. Where do you live?

A. At Athens, Alabama.

Q. How long have you lived there?

A. About 7 years.

Q. In what business are you engaged now?

A. In the general mercantile business.

Q. How long have you been engaged in that business?
A. Ever since I have been there. I clerked four years and been in business for myself three years.
Q. Do you know Henry Warten?
A. Yes, sir.
Q. Where was his store situated with reference to yours?
A. His was on the east side of the square and mine was on the north side.
Q. Were you frequently in his store before he closed?
A. Yes, sir; I was in there occasionally at night and in the daytime.
Q. Have you looked over the invoice of his stock of goods in evidence in this case?
A. No, sir.
Q. From your observation of that stock of goods what would you say was its merchantable value, with reference to the cost of it, on January 9th or 13th, 1890?
A. Do you mean bill cost—invoice cost?
Q. Yes; I speak of its merchantable value.
423 A. It is worth equally as much as the stock of goods we bought when we went into business.
Q. Whose stock did you buy when you went into business?
A. Mr. Rosenau's.
Q. How long had he been in business?
A. Since the war.
Q. When did you buy him out?
A. On January 1st, 1888.
Q. What did you pay him?
A. We got the entire stock, fixtures and all; we gave him ten per cent. below bill cost.
Q. Was that on credit?
A. No, sir; paid him cash.
Q. Had that stock of goods been recently replenished, so that it was fresher than Warten's?
A. No, sir; I clerked for him a year previous to buying him out, and he bought very few goods in the spring and none in the fall.
Q. Would you say from what you know of Warten's stock of goods that it was as good a stock of goods as the stock of Rosenau that you purchased?
A. Yes, sir; we carried about the same line. I don't see why it should not be.
Q. Were you ever around there after the transaction between Warten and Schoolfield, Hanauer & Company?
A. Yes, sir; I visited the store occasionally just the same as I did before.
Q. Was Warten there?
424 A. Yes, sir; I saw him there nearly every time I went in.
Q. Was he or not there conducting the business just — he had before?
A. As far as I could see he was.

Q. You had been in there frequently before he had this transaction with Schoolfield, Hanauer and Company?

A. Yes, sir.

Q. And you went in there frequently after?

A. Yes; I had some transactions with Warten after.

Q. What were they?

A. We were fixing up some accounts I bought from Miller, and we talked about the matter, how we would fix it up, and he referred the matter to Miller.

Q. What were those accounts?

A. They were mortgages that Miller held, and I bought the accounts in order to furnish the men on——

Q. Who owed the mortgages?

A. There was one on Dan. Fieldon. They were on customers of Warten's the previous year. The old negro came in and asked me to buy his account; that he did not want to be closed out, and I did it.

Q. And Miller held that mortgage?

A. Yes, sir.

Q. Did he claim it?

A. Yes; Schoolfield, Hanauer & Company did.

Q. And you settled it with Warten?

425 A. I don't remember exactly who we settled it with—Warten or Miller. Both of them were there.

Q. How much was it for?

A. I think about $98.

Q. Did you settle any other accounts or mortgages?

A. I think we did—a mortgage on Dunnevent.

Q. What is his given name?

A. I don't remember. He is here as a witness.

Q. Who did you settle that with?

A. I think we settled that with Mr. Sanders. That was held by the Louisville Banking Company.

Q. Were there any other accounts or mortgages you settled with Warten and Miller?

A. I don't know of any others.

Q. After this sale of Warten did he buy cotton there on the street just as he had done before?

A. I really couldn't tell you.

Q. The cotton sales for the year are about over about the 1st of January?

A. Yes, sir; especially last year. They were very little.

Q. What other failures were there in Athens at that time, if any?

A. I don't know of any.

Q. You say you were engaged in the general merca-tile business in 1889 and two years previous?

A. No, sir; this is the third year.

426 Cross-examination by R. A. McCLELLAN, Esq.:

Q. Your name is W. L. Martin. Are you any kin to the attorney general of Alabama of that name?

A. No, sir; I would like to be.

Q. You say you don't know of any other failures there that year—there was not anybody that sold as many goods as Warten did?

A. I don't know. I know he did a larger business than we did. I don't know about the others.

Q. Is it not your opinion that he did a larger business than any merchant in Limestone county?

A. No, sir; I know of a firm that did a larger business than he did.

Q. Who was that?

A. That was Peebles and Butler, of Mooresville.

Q. How much was their trade?

A. $100,000 a year; that's a fact.

Q. Then he did much the largest business of anybody in Athens?

A. I don't know whether he did or not. Mr. Heyman did almost as large a business, had as many clerks and as much stock, and bought as much cotton.

Q. Is it not a fact that it is the sales that make the trade?

427 A. The more clerks a man has, it looks like to me, the more business he ought to do.

Q. But the statement of business is derived from the books?

A. Yes; the man that has the most accounts on his books and sells most for cash does the biggest business. Of course the man that does the largest business does the largest business.

Q. How does he do that without making sales?

A. I don't know what Warten's business was.

Q. You think Heyman did as large a business as Warten?

A. Yes; I almost know he did in the Athens store.

Q. When did you buy that stock of goods from Rosenau?

A. January 1st, 1888.

Q. That was about two years before Warten broke?

A. Yes, sir; I think so.

Q. Did you or not want to go in business in Athens when you bought that stock?

A. I was kinder forced into it.

Q. Didn't you buy that stock of goods with the view of starting up in Athens as a merchant?

A. Yes, sir.

Q. What was the firm?

A. Glaze, Martin & Company.

Q. Neither of you had been in business before that on your own hook?

428 A. No; we were clerks.

Q. Rosenau had had a good trade there for several years?

A. Yes; but it was going down.

Q. Wasn't that about as old a house as there was in the town?

A. He had been in business ever since the war.

Q. That firm went out of the trade in Athens?
A. Yes; but it come back again very shortly after it went out.
Q. You did not know about that. You would not have bought them out if you had know- they were going to come back?
A. No; I thought, of course, he was going to leave.
Q. And you would sorter fall into his trade?
A. Yes; I got some of it. It was scattered to the four winds.
Q. Under those circumstances you gave ten per cent. for the stock of goods?
A. Yes, sir.
Q. Was it not the general talk that you had given a large price for that stock of goods?
A. I never heard of it, because nobody ever heard of what we gave for it.
Q. Did you ever hear of an old stock of goods being sold at 90 per cent.?
429 A. He did not want to give us 5 %.
Q. You saw Henry Warten about the storehouse of Schoolfield, Hanauer & Company?
A. Yes, sir.
Q. You don't know in what capacity he was there?
A. Yes; I suppose he was doing about the same as before the sale. I could not see much difference.
Q. He was in the house and doing business in there?
A. Yes, sir.
Q. And you saw him there before doing business?
A. Yes, sir.
Q. Did you ever see him buy any cotton after that?
A. I don't remember it.
Q. Did you ever see him buy any goods after that or go to market after that?
A. I don't remember.
Q. Did you ever see him hire or turn off any clerks or keep any books of that house in there after that?
A. I don't know that I did.
Q. All you know is that he was in there doing business?
A. Yes, sir.
Q. Did he not come to you to get you to take some of his old customers?
A. Yes, sir; that was the transaction I told you about.
Q. Did he not send several men to you to get you to extend the kindness?
430 A. I don't know; there was lots of trade flying about there.
Q. Did he not go to you to recommend some of his old customers as reliable, clever men that wanted assistance?
A. Yes; he recommended Dunnavant.
Q. His claim had been transferred to Miller?
A. No; I think it had been transferred to the Louisville Banking Company.

Q. What about Dan. Fielding? Who held the mortgage on him?

A. Schoolfield, Hanauer & Company or the Schoolfield-Hanauer Co.

Q. Were they not after him for the money when he came to you?

A. He said he had to raise the money for them.

Q. You bought the mortgage, then, from Schoolfield, Hanauer & Co.?

A. Yes, sir.

Q. Do you know whether Mr. Miller was acquainted with Dan. Fielden?

A. I do not.

Q. Who did the writing when the claims was transferred to you?

A. I don't remember.

Q. To whom was the money paid?

A. The money has not been paid yet; it was notes.

Q. Did you participate in a public meeting over the financial condition of that county last fall?

A. No, sir.

431 Plaintiffs then introduced DAVID HEIMAN, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. Where do you live?

A. Athens, Alabama.

Q. How long have you lived there?

A. Since 1873.

Q. In what business have you been engaged during your residence there?

A. General merchandise.

Q. Have you occupied the same store all the time?

A. No.

Q. Where is your store located in the town?

A. The one I am in now is on the east side of the square.

Q. Do you know Henry Warten?

A. I do, sir.

Q. Where did he have his store?

A. It is right adjoining my store, in the same building. There is a partition of about 6 inches.

Q. How do your storehouse and the house that Warten did business in stand with reference to the public square and the depot?

A. Those houses are built alike and of the same length and are under the same roof, and there are two fronts that face the depot and the square.

432 Q. There is one main entrance on the depot side and one on the public square?

A. Yes, sir.

Q. What is the size of each?

A. About 132 or 133 feet long—I suppose about nineteen and a half feet wide in the clear.

Q. Did they have an upstairs?

A. Yes, sir.

Q. When Mr. Warten was in business there what sort of a sign did he have on the depot side?

Q. He had a wooden sign—the same that he moved down when he moved his stock of goods to the new house—"Henry Warten;" that was all.

Q. Is that sign there just as it was?

A. It was just before I came here to court.

Q. What sort of a sign did he have in front?

A. It was only on the curtains inside of the store to cover the windows in case of the sun. It was only his name, "Henry Warten."

Q. Were those signs there before he made these transactions with Schoolfield, Hanauer & Company?

A. Yes, sir.

Q. And they are there now?

A. Yes, sir; they were a few days ago.

Q. Were they ever removed from there?

A. Not that I know of.

433 Q. I believe you stated that you have been engaged in the general mercantile business there for several years?

A. Yes, sir.

Q. Did you buy cotton on the streets?

A. Yes, sir.

Q. Did you see Henry Warten buying cotton there before and after this transaction with Schoolfield, Hanauer & Company?

A. Yes.

Q. Have you seen him buying cotton there since that time?

A. Yes; quite frequently.

Q. During the season of 1889–'90?

A. Yes, sir.

Q. Is it not a fact that the cotton crop is pretty well in prior to January 1st?

A. It was last year.

Q. So that there is not a great deal of cotton for sale on the streets after that?

A. No, sir; the crop was short last year.

Q. Do you know of Warten's buying cotton there after January 13th?

A. Yes, sir.

Q. What lot?

A. I believe he bought a lot from D. A. Yarbrough of about 50 bales, and from A. C. Witt & Brother a lot of about 50 or 60 or 70 bales, and some from the wagons.

Q. Did you notice any difference between his activity in the cotton market there the early part of this year and the years

434 previous?

A. No, sir; I couldn't see any difference.

Q. After this stock of goods in his store was seized by the marshal did you go in the store and look over the stock?

A. I went in there once—the very day the house was closed by the United States marshal.

Q. How did you happen to go in there?

A. The United States marshal asked me if I could not get him a boy to start the fires, and I went in there to talk to him. The house was locked, and he unlocked it and let me in.

Q. Since you have been here have you looked over the invoice of that stock of goods in evidence in this case?

A. I did, sir.

Q. From your knowledge of the stock of goods, what would you say was its merchantable value on January 13th with reference to its original cost?

A. There is a great deal of goods that no one could tell about unless he could see them; but all staples that I noticed it looked to me like they were low enough.

Q. What are staples?

A. Staples is domestics and various items. Boots and shoes are staples, and we don't know the value of the goods unless we look at them.

435 Q. What would you think would be a fair price for them with reference to their cost, from the knowledge you have stated to the jury with regard to the invoice?

A. From what I could see I think it was about as low as it could be purchased.

Q. Here is 45 old coats at $1 apiece. It would be a mighty indifferent coat that was not worth a dollar?

A. I don't know. I never dealt in second-hand coats.

Q. You never bought any coats you paid one dollar for?

A. Yes; but they were boys' coats. Old and second-hand goods are not the same. I understood this to mean second-hand coats because he handled them.

Q. "51 cloaks at 50 cents a cloak." Would you say that cloaks were not worth more than 50 cents apiece?

A. That is very cheap; cheaper than I have bought any.

Cross-examination by R. A. McClellan, Esq.:

Q. You have not been for a good many years on friendly terms with Warten?

A. Well, I am not in love with the man.

Q. Have you spoken to him for several years?

436 A. Not for almost four years.

Q. Your house is right by the side of his and you were never in his house except when Miller came to close him up?

A. Except once, by mistake. The house looked so much alike that I went in his instead of mine.

Q. Each of you sold all the goods you could to everybody?

A. Yes, sir.

Q. He did a little the largest business there for several years, did he not?

A. I believe so. That is what he said. I don't know.

Q. With all your familiarity with Warten's store there, what is your opinion about whether or not he sold more goods there than any other man?

A. I think he did.

Q. Then he told the truth when he said he did?

A. I reckon so.

Q. You spoke of Henry Warten having bought two lots of cotton before the last season was over. Do you know whether he bought it for himself or some one else?

A. I do not, sir.

Q. You don't know who furnished the money?

A. No, sir.

Q. You saw him do nothing else but do the sampling?

A. No, sir.

Q. Is he not an experienced man?

437 A. I don't consider him a good judge of cotton.

Q. He has been at it for about ten years?

A. Yes, sir.

Q. Hadn't he handled more cotton than any other man in Athens up to the time he broke?

A. I think he did.

Q. You spoke of some cotton being bought off the wagons. Whose wagon was that?

A. I can't tell

Q. As far as you know he had no interest in either of these transactions?

A. I could not say, sir.

Q. You do not know in what capacity he was in the store of Miller?

A. No, sir.

Q. Was it or not a notorious fact that he broke and sold out that stock of goods to Schoolfield, Hanauer & Co.?

A. Yes, sir.

Q. Have you ever been in my office any?

A. Yes, sir; very often.

Q. Did not an old sign stand on Judge Sanders' house for years and years?

A. It is there yet—part of it.

Q. Is or not the old sign of Rosenau Brothers on the present Pete Allen house?

A. Yes, sir; they have tried to erase it frequently, but have not succeeded.

Q. Could Henry Warten's name be extracted out of his

438 window-shades without hurting them?

A. I could not say. I am not an expert.

Q. You have sold shades?

A. Yes, sir.

Q. What would they cost?

A. $15 or $16.

Q. Then to get his name out of these shades would cost somebody $15 or $16?

A. No; the shades and all cost that.

Q. You spoke of the staple goods in the inventory. Run over it and point out some of the items of staple goods.

A. That would be quite a job, and I have not got good specks.

Q. How many pages are covered by that inventory?

A. I could not say. It was not taken according to the rules of stock-taking. They seem to have taken it just as it laid; it is scattered all over the book, with the exception of the prints and the ginghams. On the 1st — 2nd page- all is clothing, with the exception of some cloaks.

Q. Do you see any staple goods on the 3rd page?

A. Yes; there is comforts—two lots—& blankets.

Q. What do you find on the 4th page?

A. I find some staples, such as brogan shoes and calicoes and domestics and dry goods. On page 5 some old cloaks and old hardware.

439 Q. Do you know whether those cloaks were auctioned at Louisville for 20 cents apiece?

A. I don't know. I don't deal in auction goods. The 6th page is all slippers and shoes. The 7th is the same. Shoes are staples, but we don't consider them staples, with the exception of brogans. I find some polkas.

Q. What are they?

A. Coarse old shoes.

Q. What constitutes staples?

A. Goods sold on 4 months' time are not staples.

Q. What do you find on page 8?

A. On page 8 I find some more coarse women's shoes and some boots. On page 9 I find mostly shoes and some boots; 10th page, the same. On 11th page I find notions, handkerchief-, cuffs, etc. On the 12th page it is more shoes and hardware.

Q. I did not understand you as speaking with any real knowledge of that stock of goods. You just got there after the marshal came?

A. I could not say positively. I have just seen this invoice and what I saw in the room.

Q. You thought the staple goods were low enough?

A. Yes; I though- so.

Q. When did you look over that inventory?

A. Today.

440 Q. How long did you have it?

A. About three hours.

Q. Did you go over every item?

A. Mostly.

Q. Were you doing that with a view of giving evidence in regard to it?

A. No, sir.

Q. How did you come to look over it?

A. I was requested as a witness in the case.

Q. Taking that stock at $8,000 or $9,000, what per cent. of it is made up of invoiced goods—your best opinion?

A. Not over one-fourth.

Q. Is it not a fact that there is not a tenth in that stock? You did not go through the whole?

A. I did, but made no calculation.

Q. You are satisfied there is not more than one-fourth?

A. Yes.

Q. Do you know what George Witty gave for Mr. Sykes' goods, wares, and merchandise?

A. No, sir.

Q. Is it not a fact that 20% was taken off the stock?

A. I am not positive. I think it was 85 cents on the dollar. It was general merchandise.

Q. Is it not a fact that hardware and groceries do not depreciate as notions and dry goods from age?

A. Yes, sir.

441 Q. There would not be that depreciation on that kind of stock as on a dry-goods stock for years?

A. It depends on how a person handles the stock, Captain.

Q. Do you think that groceries and hardware could be kept as well as dry goods?

A. Yes, sir; if handled properly.

Q. If you throw them down every day or so to the customers, would not that injure them?

A. You don't have to do that, Captain.

Q. Are not the goods pulled down nearly every day?

A. Notions are not affected any more than hardware; it is mostly the dress goods that are affected.

Q. What are notions?

A. Spools, buttons, stockings. Some of that is ladies' furnishing goods, but we call it notions.

Q. And collars?

A. That is more in the lace line.

Q. Did you or not, while Miller was there looking over that property early this year, tell him you would not give 50 cents on the dollar for that stock?

A. Whenever I buy stock a man breaks on I like to buy it for 33 cents on the dollar.

442 Plaintiffs then introduced EVERETT HARTZELL, who testified as follows:

Direct examination MILTON HUMES, Esq.:

Q. Where do you live?

A. Limestone county, Alabama.

Q. How long have you lived there?

A. About six years.

Q. In what business have you been engaged?

A. Farming.

Q. Do you know Henry Warten?
A. Yes, sir.
Q. How long have you known him?
A. Five or six years.
Q. In what business was he engaged last year?
A. Mercantile.
Q. Were you a customer of his?
A. Yes, sir.
Q. Did he let you have any mules?
A. Yes, sir.
Q. How many?
A. Four.
Q. When did you let him have the mules?
A. In January some time.
Q. How long before Warten was closed?
A. I think it was a week, perhaps, before he closed up on Monday, about 8 or 10 days.
Q. What did you do with the mules?
A. I sent mine to Warten and a load of corn to feed them with. That was on Saturday week before the sale.
Q. After he was closed up did you meet Mr. Miller?
443 A. Yes, sir; in Warten's store. Warten introduced me to him.
Q. How long was that after Monday, the day of the sale?
A. Tuesday, I think—the day after.
Q. Did you have any conversation with Warten there?
A. I remarked to Warten (he had run me), "I have no receipt and don't know that I have any credit." The understanding was between him and me that I could have them. He then introduced me to Mr. Miller, and said, "These are good people and will do anything I want them to do." And Mr. Miller remarked, "Just go ahead and everything will turn out all right."
Q. You say this conversation occurred between you and Miller and Warten on Tuesday?
A. Yes, sir; to the best of my recollection.
Q. Were you there on Wednesday?
A. Yes, sir; I went up to Elkmont to let Mr. Clay know that Warten had broke. I had rented some land to Mr. Clay.
Q. Did you see Warten or Miller when you got back?
A. Yes; I saw both of them.
Q. Where did you see Warten?
A. In his store.
Q. What was he doing there?
444 A. He was back at the disk when I saw him.
Q. Did you have any conversation with him?
A. Yes, sir. He took me back there by the safe, in the little office there, and told me if anybody said anything to me about what I owed that house to tell them to go to hell." That is about all the conversation we had, and I was very thankful for that.
Q. What did Mr. Warten say to you when you let him have the mules?

A. I went to town and went to the store, and asked Mr. McGavock where Warten was. He said he had gone to Louisville; that he would be back on the 8 o'clock train. I told him that I had to go off, but when I came back I would see him. I then went off to Decatur, I think, and when I came back I went into his back door, and he was the first man I saw. He said, "Everett, you are the very man I wanted to see. How many mules have you got under 7 and over 4?" He says, "I am in a tight; I owe a firm a debt that can handle a car-load of mules under 7 and over 4." I said, "I have four of that kind you can have." He said, "What's the price?" I said, "Just the market price." He said, "I will give you more
445 than that, $540." He said, "Rub them up, and I will notify you in full time to send them in." In about a week or two he sent me word to send the mules in, and please to send him a load of corn to feed to them.

Q. Did he say anything else in that connection?

A. He said, "After I get over this hard place I will furnish you cheaper stock." He said I could have anything else I wanted after he got over that hard place.

Q. When did this conversation occur?

A. January some time. I sent the mules on Saturday, and I think the break was on Monday week following.

Q. And it was a few days before that you had this conversation?

A. Yes, sir.

Q. You say when you went in there first Mr. McGavock said he had gone off?

A. Yes, sir; and I said I would have to go off and would see him when he got back.

Cross-examination by R. A. McClellan, Esq.:

Q. These mules you spoke of were furnished to you last year by Warten, in the spring?

A. Yes, sir.

446 Q. They were pretty fine mules?

A. Yes, sir.

Q. What did you get them at?

A. $550 for the four.

Q. Is it not a fact that in the latter part of November or the first part of December you told Warten that your crop was going to be pretty much a failure and asked him to take back those mules and let you have cheaper ones?

A. I don't remember it.

Q. Did you not say that you could get along with cheaper mules and ask him to take these back?

A. I did not know anything about his wanting them until he told me he could handle a car-load of mules.

Q. What amount were you indebted to him?

A. Pretty heavy; I suppose between $1,400 and $1,500; not all at that time, when I sold the mules.

Q. How much were you indebted to him on January 1st last?

A. Several hundred dollars; not a thousand, though.

Q. That was after getting credit for the mules?

A. Yes; the mules and cotton.

Q. Did he tell you in that connection to treat the mules well, and rub them up and bring them in?

447 A. Yes, sir; he told me to go home & rub them up, and he said, "I think I can come out on the mules at what I am allowing you on them."

Q. About ten days or two weeks after Warten broke didn't you go with Mr. Sanders to Warten and there in your presence didn't Mr. Sanders tell Mr. Warten that you said you did not owe anything on that debt?

A. Yes, sir; I did; and Warten did tell me that I didn't owe him anything.

Q. When was it he told you that?

A. I think it was after the break-up.

Q. Why did you not tell that in your examination-in-chief?

A. They did not ask me about it.

Q. Did they not ask you about any conversation you had with him?

A. Yes, sir.

Q. Did not Warten tell Mr. Sanders that it was just a joke?

A. No. I will tell you how it happened. Mr. Tom Sanders there sent me a note and said he had two mortgages amounting to $1,300 or $1,400—one for about $900 and the other for $400—and for me to come up and settle them; that was after Warten broke. I went up there and said, "Mr. Sanders, I don't owe Warten anything." He said, "Well, we will go round to the books and see." I said,

"Mr. Warten told me I did not owe him anything," which

448 he did. So we went round there and found out that I did owe him.

Q. Did you not know that you owed him?

A. Yes, sir; but he said that I did not owe him anything. I asked Mr. Warten after he broke, "How in the world do we stand? I haven't got the receipts for a bale of cotton nor a mule." He said, "You don't owe me anything."

Q. When was that?

A. After he broke. It might have been on Tuesday after the Monday that he broke; I won't be positive.

Q. How many bales of cotton did you take to him?

A. 14 or 15, I think.

Q. You got credit for that?

A. I reckon I did. I did not see the books. I had been doing business with him, and he had always come up and treated me gentlemanly.

Q. Mr. Sanders was the lawyer fo- the Louisville Banking Co.?

A. Yes, sir.

Q. Those claims had been transferred to the Louisville Banking Company as collaterals?

A. I reckon so.

Q. And they were sent to Mr. Sanders to collect?

A. I suppose so, sir.

449 Q. And Warten, in the presence of Mr. Sanders, told you you did owe him?

A. Yes, sir; several hundred dollars; I never paid him out.

Q. You spoke of having a conversation with Warten on Tuesday after the Monday he broke?

A. Yes, sir.

Q. Is it not a fact that the only place you saw Warten that day was on Sanders' corner?

A. No, sir; it was in the store. I was introduced to Mr. Miller, and John Hill was lying on the counter.

Q. You called for a receipt for the mules?

A. Yes, sir; and he said he would not give it to me.

Q. You did not call for a receipt in full?

A. No, sir.

Q. He said if Schoolfield, Hanauer and Company said anything to you about that, tell them to go to hell?

A. No, sir; he said if anybody said anything to me about it to tell them to go to hell.

Q. At that time Mr. Sanders had in his possession the mortgages?

A. No, sir; I don't know whether he did or not.

Q. You gave the mortgages, did you?

A. Yes; on everything I had.

Q. Do you know the amount of that mortgage?

450 A. There were two of them—one for $900 or $1,000 and the other for $400.

Q. What did you understand from him when he said that you did not owe him anything—that he wanted to hide out your debt?

A. No, sir; he just simply told me that I did not owe him anything. I asked him what in the world I was to do. He said, "If anybody says anything to you about what you owe this house, tell them to go to hell."

Q. Was it not a fact that you did not owe him anything on Tuesday?

A. No; I reckon not. He had made an assignment before he said that.

Q. He said to you if anybody said that you owed him, tell them to go to hell?

A. "If anybody says anything to you about what you owe this house, tell them to go to hell."

Q. Your claim was not transferred to Schoolfield, Hanauer & Co.?

A. No, sir: I guess not.

Q. It had been transferred to the Louisville Banking Company?

A. I got a communication from them not to pay Henry Warten anything.

Q. When were your mortgages given?

A. One was given in May, I think, and the other in the early part of the year.

451 Q. Then it is a fact that about the first Saturday in January he got the mules from you?
A. Yes, sir; he sent me word by Mr. Graham to send them in.
Q. After he got back from Louisville?
A. Yes, sir. He said, "Everett, you can have anything in the world I have got." I said, "I want about eight mules, I reckon." He said: "You can have them."
Q. That was before he broke?
A. Yes, sir.

Re-examination by MILTON HUMES, Esq.:

Q. You say that the Louisville Banking Company held these mortgages?
A. Yes, sir; they notified me that they had them.
Q. When?
A. After Warten broke.
Q. Had not Warten gotten all the property in that mortgage before you were notified that the Louisville Banking Company held it?
A. All except two horses. Mr. Sanders carried those up and sold them.
Q. Did Warten say anything to you when he got those mules from you about having turned over those mortgages to the Louisville Banking Company?
452 A. No, sir; he said he would want a car-load of mules. After he broke I received a notice from them, saying not to pay him.
Q. Mr. Sanders was representing the Louisville Banking Company?
A. Not at that time. They notified me, and then after that he notified me.

Re-examination by Mr. MCCLELLAN:

Q. You don't know whether the Louisville Banking Company's debt from Warten has been settled or not?
A. No, sir.
Q. You are still indebted on that old account with Warten several hundred dollars?
A. Yes, sir; I suppose I am.
Q. That is a good debt?
A. Yes, sir; I owe it and when I am able I will pay it.

Plaintiffs then introduced J. D. MARKHAM (recalled), who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. After Warten closed out, were you in the employ of that store?
A. Yes, sir; I was in the employ of Mr. Miller after he replevied the goods.
Q. How long did you continue there?

453 A. About two weeks, I think, sir; 15 or 16 days.

Q. How long did Miller (the old gentleman) stay there after you went back?

A. After he employed me I think he was there about a week.

Q. Was Warten there?

A. He was there at the house occasionally, sir.

Q. What was he doing?

A. For several days he was doing nothing; just sauntering about in and out.

Q. What did he do after that?

A. About 7 or 8 days after Mr. Miller employed me Mr. Warten came to me and told me that Mr. Miller had employed him as one of the clerks to take charge of the establishment, to run the establishment as a clerk in the house.

Q. Did he run it whilst you were there after that?

A. It was sort of a partnership running; Walter Miller was there and had charge of all the cash received.

Q. What did Warten do?

A. He sold goods and sorter knocked round in the office.

Q. What were your instructions to sell goods at in the first instance?

A. The day Mr. Miller employed me I think was the day he replevied the goods. Mr. Warten called me in and said, "Mr.
454 Miller wants to see you." I went back then and Mr. Miller employed me, and he said he was going to sell them off for cost, and he said to sell for cost and get the money.

Q. After Warten told you that he had been employed as clerk did he give you any instructions in reference to selling, and, if so, what? and tell all he said in that connection.

A. After supper one night, as well as I remember, Mr. Warten came to me and said, "Mr. Miller has been giving you so much, and I will increase your salary for the time you are here;" and he said, "We have been selling goods at cost, and I think we had better put on a little more—10 or 15 per cent." I think he said, "We can sell just as readily and easily at that as at cost." I told him I thought Mr. Miller did wrong in the first place; the goods were in demand. I told him that was all right, and whatever per cent. he said I would sell them at, but I wouldn't tell the people they were buying at cost. (We had been selling at cost everything.) I said, "That is all right, and whatever per cent. you say to put on them I will sell them at."

Q. You say that that was a fresh, clean stock of goods, and Warten agreed that you could sell them as readily at 10 or 15 per cent. above cost as at cost?

455 A. Yes, sir; it was not over two or three years old.

Q. How long have you been engaged in the mercantile business?

A. Ever since the war, 1865 or '66.

Q. You have been a merchant all the time?

A. Yes; except a year or two.

Q. What did Miller agree to pay you?

A. I believe it was a dollar a day.

Q. Do you know what he paid the other clerks?
A. No, sir.
Q. You are a good clerk, are you not?
A. I generally get pretty good wages, sir.
Q. What did Warten offer to pay you?
A. $1.50 a day. Mr. Miller said he would pay me a dollar a day and if I wanted to take it I could go to work. I was just out of a job and rather than loaf around I did it.
Q. You say you assisted in taking an invoice of those goods?
A. I did.
Q. When you presented that invoice to Warten did he say anything about it; if so, what did he say?
Q. When we commenced taking it he said, "Boys, don't take it up too high," and I commenced just as I had always done, to the best of my ability. When we got through calling off from our sheets to the person taking the copies he complained of some things being taken too high. I said, "They are your goods; put
456 the price on them you want on them."
Q. Had he ever complained that way before in taking an invoice?
A. No, sir; I don't think he had. I don't know why he did then; never thought of it afterwards.

Cross-examination by R. A. McClellan:

Q. Were you or not on the grand jury of Limestone county in December last for two weeks?
A. I forget; I think I was on it in the fall—November.
Q. While you got your fees did you not get your salary from Warten, with no deductions on that account?
A. Yes, sir.
Q. What had your salary been with him?
A. At that time he was paying me $60 a month.
Q. Didn't he return a great number of goods he bought last fall?
A. Yes, sir.
Q. To the majority of the parties he bought of?
A. Yes, sir.
Q. Did he not tell drummers in your presence not to come about him, that he would not buy?
A. After he came back he positively would not look at them.
Q. Did you or not tell him that he needed in his stock cer-
457 tain articles and he declined to get them?
A. No, sir; not after he got the stock. We returned goods that he did not need to New York and other places. There might have been some little articles that he had overlooked that I reminded him about.
Q. After the crop was developed he ceased to buy goods?
A. Yes, sir; he returned a great many to nearly every house.
Q. You said that Warten complained of the prices you put on some of the goods in the inventory?
A. Yes, sir.

Q. Is it not a fact that the only two articles he complained of the price being too high were mitts and beaded capes?

A. I can't say there were only two, but about the capes I do remember. I could not say about anything else. There might have been one or two or three other articles.

Q. As a matter of fact, had not those been there for a good while?

A. No, sir; he bought them in the fall stock, I think.

Q. Did he not tell you that he gave six dollars for those beaded jerseys or capes, and that he would take $4 for them?

A. I don't think he designated this price on them. There
458 were four different grades of them.

Q. Do you know what ever became of those articles that he thought were put too high?

A. They were in the stock when I left. Several of the capes had been sold.

Q. Above or below the prices you put on them?

A. I could not say positively; I think they were sold probably at about what they were marked; probably a little less. There was generally ten per cent. put on the goods.

Q. You said something about Warten saying he would get your wages increased. Is it not a fact that he told you that $1 a day was too little; that he had seen or would see Mr. Miller and get him to raise it?

A. No, sir; Mr. Miller told me that he wanted me for a few days. He said, "I can't afford under the circumstances to do much." He then offered me a dollar a day. I said, "All right; rather than loaf around I will take that." A day or so after that Warten came to me and said, "Mr. Markham, the little amount Mr. Miller is paying you is too small and I will give you $1.50 a day."

Q. What circumstances enable you to speak with such confidence about such a conversation as that after this lapse of time?

459 A. There was 50 cents difference. I had been getting a much larger salary.

Q. A man would not forget 50 cents?

A. No, sir; not when he had been getting $60 or 70 a month.

Q. Did you not tell Mr. McGavock that you would not come about the store if you were Warten; that it inflicted upon him such humiliation?

A. Yes; I suppose I did. I told Warten himself I would go off, and he told me he was going off.

Q. Did not Warten give you a preference when he broke?

A. Yes, sir; he paid me every cent.

Q. What in?

A. Stock and accounts.

Q. How much?

A. I think he transferred to me four mules and an account. He owed me a balance of $135 or $165. I think it was about $135 or $140.

Q. Wouldn't you remember better whether it was one or the other than you would about fifty cents?

A. I think it was $140.
Q. But you are not certain about that?
A. No, sir.
Q. Did you get that property at a reasonable price?
A. Yes; it was satisfactory to me.
Q. Was that a fraudulent preference he gave you?
A. I did not consider it fraudulent much.
Q. When did he pay you that?
460 A. He sent me the transfers Monday morning by Mr. McGavock. I took it and receipted for it. He did the other clerks the same way.
Q. When was that conversation you had about the dollar and the dollar *and the dollar* and a half?
A. It was 8 or 9 days after Miller had employed me.
Q. Was it not two weeks?
A. I could not tell you the exact date. Mr. Miller employed me the day he opened, I think. The day he replevied the goods, I think, was on Thursday, and probably the next Thursday Miller opened up, and about eight or ten days after that I had the conversation with Mr. Warten. Mr. H. G. Miller went home, I think, on the noon train on the day he had the conversation with me. Walter Miller paid me the dollar and a half a day under the arrangement I had made with Warten. I had never seen or said anything about it to Mr. H. G. Miller or Walter Miller.
Q. Was Mr. Miller there that day?
A. No; I think he left that day. I did not see him that night nor afterwards for several weeks.
Q. Who kept your time there?
A. Warten kept the books.
Q. Who made the settlement with you?
A. Mr. Walter Miller.
Q. Who mentioned or designated the length of time you had been there?
461 A. Walter Miller; he paid me a dollar a day up to the time Warten promised to give me $1.50 a day.
Q. Was or not one dollar a day too cheap for your services there?
A. I should say it was, sir.
Q. Was not a dollar and a half more reasonable?
A. Yes; but I would not have taken that unless the cotton crop had been so bad and I had nothing to do.
Q. Wasn't there large sales that time?
A. Yes, sir; pretty large.
Q. Have you no idea of the bulk of the trade there?
A. Yes; while I was there there was considerable trade.
Q. Didn't it slack off by the time you left there?
A. Some days there was a large trade and some days not.
Q. You were dismissed from the store in about two weeks?
A. Yes; I think so.
Q. You got no more employment from anybody in the house?
A. No.

Q. You said awhile ago you did not want to be loafing around, the reason you accepted a dollar a day?

A. Yes, sir.

Q. Then all the positions at Athens were filled about that time?

A. Yes, sir.

462 Q. The only parties turned loose that could have been employed were Warten's clerks?

A. Yes; three or four of us were thrown out; there were three or four other young man around the town, though.

Q. Don't you know that the old man Miller, before he left there, instructed Walter Miller to raise your wages?

A. No, sir; there was nothing said about my wages until the night Henry Warten came to me and offered to raise them to $1.50 a day.

Q. You don't know what occurred between Warten and Miller?

A. No, sir.

Q. You don't know whether they sent Warten there or he came on his own hook?

A. No, sir.

Q. What is the state of your feelings towards Mr. Warten?

A. As pleasant as any man in the place.

Q. How long did you clerk for him?

A. I went with him in 1885 or 1886.

Q. When he went out of business you lost your position there?

A. Yes, sir.

Re-examination by MILTON HUMES, Esq.:

Q. I understood you to say that these accounts that were transferred to you by Warten were delivered to you by Mr. McGavock?

463 A. Yes, sir; on Monday morning, January 13th, before breakfast, he came down home and notified me that Henry had sold out to Schoolfield, Hanauer & Company and he said, "Here's the stock of four mules, and if you will accept it sign this written receipt," which he brought. I told him I would come up directly after breakfast, and I went up there after breakfast and accepted it.

Q. That was the same James F. McGavock who was afterwards appointed assignee under the general assignment?

A. Yes, sir; nothing was said then about any assignee.

Plaintiffs then introduced JOHN B. TANNER, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. Where do you live?

A. Athens, Alabama.

Q. How long have you lived there?

A. I have been living there off and on for about 33 years—all my life.

Q. What is your business occupation?
A. Got none right now.
Q. What has it been?
A. Mostly cotton-buying most of my life.
Q. Did you ever keep books of account?
A. Yes, sir.
464 Q. Ever been salesman in a store?
A. Yes, sir.
Q. Do you know Henry Warten?
A. Yes, sir.
Q. How long have you known him?
A. I have known him 5 or 6 or 8 years.
Q. Were you ever in his employ as book-keeper?
A. Yes, sir.
Q. State in what capacity you have been in his employ, and when and where.
A. I was in his employ as book-keeper the first time two or three years ago. Then I quit there and went off and came back and went to keeping books for him again about the first of this year. I went to him the night of December 31st, 1889.
Q. You were with him then until he closed out?
A. Yes, sir.
Q. What is your recollection as to the day he closed out?
A. It was January 13th.
Q. What day of the week?
A. I think it was Monday morning.
Q. You were in his employ at that time?
A. Yes, sir.
Q. Were you a salesman also?
A. Not then.
Q. Did you continue there after he sold out?
A. Yes, sir; I was employed by the assignee, Mr. McGavock.
Q. How long were you in his employ?
A. I think about a week.
Q. When did he employ you?
A. That week after Warten closed out, on Monday morn-
465 ing. I don't think they did anything there, and I went to work for the assignee about the next Monday morning. I worked for Jim McGavock a week as book-keeper.
Q. Who took charge of the books then?
A. Henry Warten.
Q. Did you work for anybody else in the store there?
A. Yes; I sold goods in the store.
Q. When?
A. I quit selling goods on Saturday night and the next Monday went to selling goods.
Q. You were not in the employ of the store and of the assignee at the same time?
A. No, sir.
Q. What did the assignee pay you?
A. $2 a day.

Q. When did you say you went into the employ of the store, selling goods?

A. I don't remember exactly. I kept books for Mr. McGavock, I think, about a week, and Monday morning after that week I went in selling goods.

Q. Who employed you to sell goods?

A. Walter Miller.

Q. What did he agree to pay you?

A. $1 per day.

Q. Do you know what he was paying the others?

A. No, sir.

Q. How long did you continue there in that employment?

A. About two or three weeks.

Q. Was Warten engaged in the store there at that time?

A. Yes.

466 Q. What was he doing?

A. He seemed to be managing round and keeping the books. He was there on the books and I saw him giving directions about the store.

Q. Were you there when the inventory was taken of the goods?

A. Yes, sir.

Q. When was that?

A. One week in January—the first week.

Q. Did you hear any conversation between Warten and Mr. Markham in reference to the inventory?

A. Yes, sir.

Q. What was it?

A. I was at the desk copying off the inventory and Mr. Markham was taking down, and something come up in it, and Henry Warten called his attention to it and told Mr. Markham that he was valuing the goods too high: "You are trying to make me out worth more than I am."

Q. Was that all?

A. That is about all I remember.

Q. What books did you keep?

A. I kept the day book and the ledger.

Q. Did the books you kept have a statement of his liabilities?

A. They did not.

Q. Did you see them while you were there?

A. No, sir.

Q. Where was that book?

A. He kept them in the safe.

Q. You did not have access to them?

467 A. I had access to the safe in putting the books up at night.

Cross-examination by R. A. McClellen, Esq.:

Q. His liabilities were not in the books you handled?

A. No.

Q. They may have been in other books?

A. Yes, sir.

Q. You had the books containing his dealings with the people there—accounts against people in his favor?

A. Yes, sir.

Q. Is it not a fact that Warten spoke to Mr. Markham about the value he put on some beaded jerseys and mitts?

A. Yes; remember about some jerseys; I don't know whether they were beaded or not.

Q. Was anything mentioned about mitts?

A. I think there were some buttons mentioned.

Q. What articles were mentioned?

A. I don't remember all of them.

Q. As a matter of fact, had they not been put higher than what they were sold at?

A. I really don't know; I am no judge of goods.

Q. You added up the inventory, didn't you, John?

A. Yes, sir.

Q. Didn't Warten run over your figures and find a mistake of $100—you had put it too low, and he put it $100 higher?

A. I made it out $10,000 and something, and he added it
468 up and made it out $9,000 and something; that is my recollection.

Q. Did you look over the books again?

A. No, sir.

Q. The figures will show which one of you was right?

A. Yes, sir; they will tell.

Q. Did you not help to take the inventory?

A. No, sir; the only thing I did was to copy as they called the articles off.

Q. Did not Warten tell those that took it that he wanted them to take it to show exactly what he was worth?

A. I did not hear his instructions.

Q. You say he was in there about the books. Mr. McGavock had him on the books the first week or two, did he not?

A. No, sir; he was about the books all the day.

Q. Don't you know he was there working the books up for the assignee?

A. Yes, sir; I was with him; he was finishing up those statements and I was standing back there copying.

Q. Wasn't that a pretty big job for anybody to make out the bills against his customers?

A. I made out the bills myself and footed up all the accounts.

Q. It was a pretty big job, was it not?

A. Yes, sir.

469 Q. You don't mean you made out the accounts?

A. No, sir.

Q. What did you do?

A. I was footing up. Here's a man's account up here, and I would run up the column and put his balance down and send him out a notice about it.

Q. You were posting the books?

A. It was not posting. We would put down the amount due the assignee. It might be a statement not itemized.

Q. You notified the men that the assignee has an account against you for so much?

A. Yes, sir. There was no credits sent out. If there was a credit we took that from the debit and sent out the balance.

Q. How many men had accounts on those books?

A. I have no idea.

Q. As many as 1,000 or 2,000 or 3,000?

A. I have no idea.

Q. What did Warten do on the books?

A. After we put those accounts & all down he added them up. If anybody came in he would receive the money and give them a receipt for it.

Q. He was acting as cashier for the assignee?

A. I suppose so. After he had sold out there was no post-
470 ing or anything of that kind to do on the books, and they were selling goods there for cash, and Walter Miller the first week seemed to take charge of the cash, and Warton would help him to make up his cash every night and balance it, and after that Warten was generally down in front. They only run a cash account.

Q. Walter Miller was there in charge of the store for his firm?

A. I suppose he was.

Q. Mr. H. G. Miller had nothing to do with Warten's book-, did he?

A. No; nothing but the accounts transferred to Schoolfield, Hanauer & Company.

Re-examination by MILTON HUMES, Esq.:

Q. You say Warten received cash for Schoolfield, Hanauer & Co. and gave receipts?

A. Yes, sir.

Q. Who kept books in there after Henry Warten was employed by Schoolfield, Hanauer & Company?

A. I could not tell you.

Q. Who did you see Warten get money from for the assignee?

A. I don't know who; parties who came there to pay off their accounts.

Q. Warten was then employed by Mr. McGavock?

A. Yes, sir.

Plaintiffs then introduced L. L. WEIR, who testified as follows:

471 Direct examination by MILTON HUMES, Esq.:

Q. Where do you live?

A. Limestone county, Alabama.

Q. How long have you lived there?

A. About 37 years.

Q. What is your business?

A. I am a farmer.
Q. You live in the country, not in the town?
A. I live 11 miles in the country.
Q. Do you know Henry Warten?
A. Yes, sir.
Q. Did you trade with him in the year 1889?
A. Yes, sir.
Q. Did you owe him anything at the end of the year?
A. Yes, sir.
Q. How much was it, and how was it secured?
A. On settlement in December, or the latter part of last year, I think, there was a balance due him of $88.80, secured by a mortgage.
Q. Did you see Warten after the store was reopened?
A. Yes, sir; after the store was opened I met him about the door of the store and told him that I wanted to pay him some money.
Q. Did you go into the store with him?
A. Yes, sir; he referred me to Mr. McGavock, who was behind the counter there selling goods. I went to him and told him
472 I had come to pay some money. He said, "I am not the man; you go to Warten." I went to Warten and asked him if he would give me a receipt for some money on that claim of Hess, Henle & Company, and he said he would. He went to the desk and wrote me a receipt for $20. (Witness produces receipt as follows:)

ATHENS, ALA., *Feb. 10th*, 1890.

Received of L. L. Weir, Esq., twenty dollars on acc't ($20.00).

HESS, HENLE & CO.,
Per WARTEN, *Agent.*

Q. How much did you pay at that time?
A. $20. About a week following I paid $60.
Q. To whom?
A. Warten. I went in there and paid him $60, and had taken a receipt for it. Just then a gentleman walked through the store, who was owing me, and I went out there and he paid me some money, and I went back and told Warten that I would pay the whole thing off, and he called Mr. McGavock back there, and I think all the credits were put on the mortgage and McGavock's name was signed, and I took it and went home. I left the receipt for the $60 laying there on the counter, because the credits were put on the mortgage. I paid the first payment on my mortgage before he failed; it was $82.55, leaving $88.80. The next payment was
473 in January, after the failure, in the store and at the desk; in a few days after I paid the remainder.
Q. The $20 you paid he gave you a receipt for?
A. Yes; and the next payment of $60 he offered me a receipt for, but getting the money before I got off, I paid the whole remainder off, which made $68.80. I think the mortgage has the $8 credited.

Q. Did you get receipts for all the payments?

A. Yes, sir; but the receipt for $60 I did not take out of the store. (Witness identifies statement of his account with Warten, amounting to $171.35.) Credited "Dec. 11, by cash on acc't, $82.55; Feb. 15, by check, $60.00; Feb. 15, by cash, $8.80; Feb. 10, by cash, $20.00." Endorsed on back: "For value received I hereby transfer and assign all my rights and title to Hess, Henle & Co. January 8th, 1890. Henry Warten."

Witness also identifies mortgage given by him to Henry Warten, endorsed: "Henry Warten. Settled in full. Hess, Henle & Co., per McGavock, agent."

Plaintiffs offer these in evidence.

Q. You paid on December 11th $82.55, leaving a balance of $88.80?

A. Yes, sir.

Q. And on February 10th you paid $20?

A. Yes, sir.

Q. Where did you pay it?

474 A. In that storehouse of Warten's, at his desk.

Q. Who did you take the receipt from?

A. Mr. Warten.

Q. The next is $68.80. Who did you pay that to?

A. I paid it to Mr. Warten, and Mr. McGavock wrote that on there: "Settled in full. Hess, Henle & Co., per McGavock, agent."

Q. Warten received the money, did he?

A. Yes, sir.

Q. Did Warten say anything to you about furnishing you that year; if so, when?

A. It was in December, about the time that first credit was put on that mortgage.

Q. When was that?

A. About a week after the failure; I went to him to know what I had to do; I met him on the street in Athens.

Q. Was the store then open?

A. It was open that day, but not at the time we had the conversation.

Q. Were you in the store during the day?

A. No, sir; not that day.

Q. Then the conversation you had with him at that time about furnishing you for the year was on the street?

A. No, sir; the conversation in regard to furnishing me was in the store, in December. The one on the streets was in regard to what I had to do in paying the balance.

Claimants object to this evidence on the same grounds as to the 5th preceding question. Objection sustained. Plaintiffs ex-

475 cept to the ruling of the court. Plaintiffs propose to show in this connection that Warten said to witness at that time to hold on, everything would be all right.

Cross-examination by R. A. McCLELLAN, Esq.:

Q. Is this postal card in your handwriting? (Handing witness the following:)

"ATHENS, ALA., *Feb.* 1, '90.

"GENTLEMEN: I am in receipt of your notice, Jan. 20, that you hold claim against me, transferred by Henry Warten to you, for $88.80. I am ready and willing to pay this, and shall proceed to sell the property held under your mortgage immediately upon your sending me written authority so to do or appointing somebody here to attend to this for you.

"Resp't'ly, L. L. WEIR,
"*Petty, Ala.*

"Addressed: 'Hess, Henle & Co., Louisville, Ky.'"

A. No, sir; a lawyer wrote that. I can't read it.
Q. What lawyer wrote that?
A. Mr. Tom Sanders.
Q. You directed him to send this letter?
A. Yes, sir.
Q. Had you not before that time received notice from Hess, Henle & Co. that they held the debt you owed Henry Warten?
A. Yes.
Q. It was in answer to that that this postal card was mailed to them?
476 A. Yes, sir.
Q. Did you get any answer to that?
A. I did not.
Q. Don't you know that Hess, Henle & Co. appointed McGavock as their agent?
A. I do not.
Q. Don't you know that Mr. McGavock was their agent, and that on one occasion, being busy in the store, told you that Henry Warten would give you a receipt?
A. Mr. Warten first sent me to Mr. McGavock, and he sent me back to Mr. Warten, and Warten went on and gave me that receipt, and the next receipt he wrote out in the same way; then McGavock came down when I paid over that $68.80 and marked on this mortgage, "Settled in full. Hess, Henle & Co., per McGavock, ag't."
Q. That is all of it?
A. Yes, sir.
Q. You were notified by Hess, Henle and Company that they held a claim you formerly owed Warten?
A. Yes, sir.
Q. You requested them to designate an ag't?
A. Yes, sir.
Q. You went to him and paid it?
A. Yes, sir.
Q. Do you know whether or not that money was immediately deposited in the bank to the credit of Hess, Henle & Company?
A. No, sir; Henry Warten said he was going to do so.

Q. Did you not come down there and ask me about it?
477 A. Yes; you said you were their lawyer and had done the writing.
Q. Don't you remember whether I told you that Sanders was probably in possession of it?
A. I don't know.
Q. Did I not tell you that I was not their lawyer and did not know anything about it?
A. Yes; I believe so.

Re-examination by MILTON HUMES, Esq.:

Q. Did Hess, Henle & Co. ever notify you that Mr. McGavock was their agent?
A. No, sir.
Q. Who in fact did you pay the money to?
A. Henry Warten received it all from my hands.
Q. Mr. McGavock did not receive any of it, did he?
A. No, sir; I paid it to Henry Warten, and he immediately left the store and said he was going to the bank to deposit it.
Q. State what occurred in the conversation Mr. McClellan just asked you about.
A. I think I went to Mr. McClellan's office to get some advice in regard to selling the property and depositing the money. I had received a notice from Hess, Henle & Company. The property was under mortgage. I think I made that statement to him. He told me he was Mr. Warten's lawyer and could not give any
478 advice in the matter.
Q. Didn't you say awhile ago that he said in that connection that he had prepared the papers to Hess, Henle & Company?
A. Yes; he told me that he had done the writing in making those transfers, and stated that they were taken dollar for dollar.

Recross-examination by Mr. MCCLELLAN:

Q. Did I not afterwards tell you that I did not know who the parties were, and I referred you to other parties, did I not?
A. Something of that sort was said, I believe.

Plaintiffs then introduced A. M. DONHAM, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. Where do you live?
A. In Limestone county, Alabama.
Q. How long have you lived there?
A. About five years.
Q. What is your occupation?
A. I am a farmer.
Q. Do you know Henry Warten?
A. Yes, sir.

Q. In the latter of 1889 were you indebted to him?
A. Yes, sir.
Q. Was that indebtedness secured in any way; if so, how?
A. Yes, sir; it was secured by mortgage.
479 Q. Have you got the mortgage?
A. No, sir; not here.
Q. What property was covered by the mortgage?
A. Some mules and horses.
Q. What did you do with those mules and horses?

Claimants object to this question on the ground that it is immaterial and seeks to bind the claimants by the conduct of third persons. Objection sustained by the court. Plaintiffs except to the ruling of the court. Plaintiffs propose to show in that connection that between January 1st and 13th the witness sold to Warten *Warten* the mules and horses he had given Warten the mortgage on, and that they were part of the mules and horses that Schoolfield, Hanauer & Co. got, and that after he had let Warten have them he received a notice from the Louisville Banking Company that the note and mortgage had been transferred to them and that the claim against Donham was transferred to the assignee.

Q. Did you have any conversation with Warten in the storehouse after it was opened again subsequent to its being closed? If so, state where it was and what was said.
A. He said I need not be in a hurry, that he thought he would be all right in a few days.
Q. What was your conversation about that caused him to state that?
480 A. We were wanting him to furnish us some more mules.

Cross-examination by R. A. McClellan, Esq.:

Q. When did you go to Athens to see Mr. Warten?
A. Right after the store was closed.
Q. You got a notice from the Louisville Banking Company that they held the mortgage you had given to Warten?
A. Yes, sir.
Q. What time did you get that?
A. I forget, exactly.
Q. How long was it before or after Warten broke?
A. It was a few days after he broke.
Q. Did you get the notice from Louisville or from Mr. Sanders?
A. From Louisville.
Q. Can you give no idea of the time—how long it was after he broke before you got that?
A. It was not very long; it could not have been more than a week or two.
Q. How long after that before you saw Warten?
A. We saw him at different times when we were in town there.
Q. How long after that before you saw him on the occasion you spoke of awhile ago?

A. I don't know exactly just what time it would be.

Q. Did you go to see him as soon as you got that notice?

481 A. Yes, sir.

Q. Was it the week he broke?

A. I was at Athens at different times. I don't remember; didn't take no dates.

Q. When you got that mortgage you did not know but what Warten had your mortgage still?

A. No; I supposed he had it.

Q. In the meantime you had let him have two of the stock?

A. Yes, sir; two mules.

Q. When did he get the mules?

A. Some time in January, I think.

Q. Before or after he broke?

A. Before.

Q. You went to see him when you were informed that these Louisville men held that mortgage?

A. After they notified me they had this mortgage.

Q. That carried with it the property in the mortgage, didn't it?

A. I don't know.

Q. When he said that it would be all right in a few days, did he not say in that connection that he had authority to take up those collaterals? Is not that the connection in which he said it?

A. I sold him those mules back and my cotton. I did not know who held the mortgage.

Q. Warten had gotten the mules from you?

A. Yes; before he broke.

482 Q. And you did not understand about it and went to him about it, and in that connection he spoke about he would be all right?

A. Yes, sir; I wanted to see what I should do?

Q. And he satisfied you that it would be all right?

A. Yes; I taken his word.

Q. Did he not tell you about a letter that he had from the banking company?

A. No, sir; he didn't say anything about a letter.

Q. How many mules and horses were in that stock?

A. I believe there were three mules and one horse and some cows.

Q. Mr. Sanders, as attorney for the banking company, afterwards dunned you for the debt?

A. Yes, sir.

Q. Did you not dispute the debt and did not Mr. Sanders take you before Warten, and did not he tell you there that you said that there was not but one head in the mortgage?

A. I disputed one horse only.

Q. How did you come to go to Mr. Sanders?

A. He sent me the notice.

Q. Did he come to you or you go to him?

A. I went to him.

Q. And you got into a dispute about what the mortgage covered?

A. Yes, sir.

Q. Anyhow, did you not go with Mr. Sanders to Warten?
483 A. I don't think he was with me when I asked Warten about the horse. He was with me at one time.
Q. How long afterwards was it?
A. I could not tell you. I did not think there would ever be any trouble.
Q. Warten said the mortgage was all right, and did you not afterwards pay out the money?
A. No; I went to see Mr. Sanders and paid him $135.
Q. Where is the mortgage?
A. I have it at home.
Q. Did Mr. Sanders give you the mortgage for less than it called for?
A. No, sir.
Q. Then Mr. Sanders let you have the mortgage, although the debt was not paid in full?
A. No; I paid the mortgage off.
Q. What is the mortgage debt?
A. I don't know.
Q. Was that the entire debt?
A. I don't know; my son paid it off. I gave him the money and he paid it off.

Re-examination by MILTON HUMES, Esq.:

Q. Mr. McClellan asked you if Warten's statement to you that it would be all right; just wait awhile—if that did not refer to this mortgage on this stock. Tell me just exactly how that come about.
A. I let him have two mules back; he wanted them back,
484 and he said he would furnish me others, and after he busted it left me in a pretty bad shape, and I had always dealt with him, and of course I had nobody else to go to, and I let him have those two mules and cotton and all and paid him $135.
Q. When you went to Warten about this mortgage, what did you say in reference to the mortgage?
A. I asked him what I should do. He said he thought he would be all right in a few days.
Q. Did he say anything about furnishing you for the year?
A. No; I believe that is all.
Q. I understood you to say that he said to you in one conversation in the store—that you were talking to him about furnishing you for the year, and he said to you in that connection that he would furnish you for the year; is that right?
A. Yes, sir; of course, I asked him to furnish me for the year.
Q. What did he say?
A. He said he thought it would be all right.

Recross-examination by R. A. MCCLELLAN, Esq.:

Q. Then, if I understand you, you did not go there to see him or talk with him about having collected mules under the mortgage;

he had collected mules from you under the mortgage he had transferred to others?

485 A. I did not know where the mortgage was until they notified me.

Q. And in that connection he said he would be all right soon?

A. Yes, sir.

Q. Was Mr. Miller present?

A. No, sir.

Plaintiffs then introduced JULIUS BAMBERGER, who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. Where do you live, Mr. Bamberger?

A. Louisville, Ky.

Q. How long have you lived there?

A. I was born and raised there; I was born a few miles from there, but moved there before I was a year old.

Q. What is your business?

A. I am one of the firm of Bamberger, Bloom & Company, wholesale dry-goods merchants.

Q. They are the plaintiffs in this case?

A. Yes, sir.

Q. How long have they been engaged in that business?

A. About forty-seven years, sir.

Q. In Louisville?

A. Yes, sir.

Q. Do you know Henry Warten?

A. Yes, sir.

Q. Was he a customer of yours in 1889?

A. Yes, sir.

Q. Does he owe the firm of Bamberger, Bloom & Co. any-

486 thing on account of indebtedness for 1889?

A. Yes, sir.

Q. What is the present evidence of that indebtedness?

A. Notes. One was for $1,000, due January 15th, 1890; the second was for $500, due February 1st, 1890; the third was for $500, due February 15th, 1890; the fourth was for $500, due March 1st, 1890; the fifth was for $500, due March 15th, 1890; the sixth was for $1,142.52, due November 1st, 1890; the seventh was for $1,142.50, due November 15th, 1890; the last one was for $1,142.50, due December 1st, 1890.

Q. What time did the notes bear date?

A. December 30, 1889.

Q. At the time those notes were given—December 30th, 1889—was Henry Warten owing the firm of Bamberger, Bloom & Company any other amount than that covered by those notes?

A. I told the book-keeper to make out the statement of his account with us. We had a new book-keeper in our house then. Mr. Sternhauser, the book-keeper of our house for the South, had died, and in place of him we had a young man by the name of Born, who is now

our book-keeper. In making out the statement of Henry Warten's account he omitted a small bill of $211.75. The bill is dated Oct. 1st, four months.

Q. The fact is, then, that was not included in the statement you rendered Warten?

A. No, sir; it was not due.

Q. It was not due until February 2nd, 1890?

487 A. No, sir.

Q. And these notes were given without it?

A. There was another small bill of $7.50, which was also left out of the statement, making the whole amount $219.25, and there was a credit on that, which left a balance of $216.49, and that was not included in these notes, and afterwards, in looking over the books, the mistake was discovered.

Q. Did Mr. Warten come to your place of business on December 28th, 1889?

A. On Saturday he came into our house, called back in the office, and presented me a letter from Schoolfield, Hanauer and Company. (Witness identifies letter copied on page 277.)

Q. State as near as you can the conversation that occurred between you and Warten when he presented you that letter.

A. He came in and presented me the letter, and said he wanted to arrange for a past-due note for 4,700 and some odd dollars, which had been protested, and his account. I asked him how. He said he wanted to give papers. He never stated that he wanted to fix up the account until next fall; that was not mentioned in any way, shape, or form. I told him that we would close up with him by taking these notes, which was satisfactory to him or he would

488 not have signed the papers.

Q. Did you force him to sign the papers?

A. I do not do any such thing as force in my business.

Q. In the conversation you had with him was anything said in reference to cash?

A. I showed him that he had not sent us one dollar for goods bought the season before; he had not paid us one dollar. He sent us a note for $4,700 on his own account, due four months after date. There was 114 and some odd dollars interest on his account. After he sent the note he wrote back to us to hold on, that business was very dull and nothing doing, and just before the note came due, December 15th, he wrote it was impossible for him to pay it, and it went to protest, and I showed him the books of Glaze, Martin & Company in the same place as he was; they had paid us part.

Q. That is not what I am talking about. In this conversation that you had with him did you require Mr. Warten to pay you cash?

A. I don't know whether you call credit cash or not.

Q. Did he pay you any cash?

A. Not one dollar. I asked him if he could not pay any cash. He said no.

Q. And that was what occur-ed in reference to his paying cash at that time on his indebtedness?

A. It is, sir.

489 Q. And then afterwards you made this agreement with him to take his notes in extension?

A. Yes, sir.

Q. Did you decline to grant the extension to Warten requested in that letter?

A. I did not, sir. I gave him an extension.

Q. Did you give an extension on the faith of that letter?

A. Yes; certainly.

Q. Would you have given an extension unless you had received that letter?

A. Certainly I would not.

Q. Did you write a letter in reply to that letter to Schoolfield, Hanauer & Company?

A. No, sir.

Q. Did you take any steps toward the collection of you- debt after you took those notes and until you heard of the sale by Warten to Schoolfield, Hanauer & Company?

A. The first thing we did after we learned of the sale, we telegraphed to Schoolfield, Hanauer & Company, saying, "Understood here you have bought Henry Warten out. Are we protected?"

Q. Did you do anything in reference to trying to collect your debt?

A. No, sir; we thought, as we would do after writing that letter, that if anything should transpire we would try to protect that party just the same as ourselves.

490 Q. How often have you been in the court-room as a witness?

A. I was never in the U. S. court in my life until I was here.

Q. You say you sent the telegram the day you ascertained the sale had been made. Do you remember the date of the telegram?

A. January 13th, 1890.

Q. How did you ascertain that Warten had sold out?

A. We heard so from our attorney or from a party at Athens.

Q. Who was it?

A. I think we had a telegram—my impression is—from Mr. Martin, of the firm of Glaze, Martin & Company.

Q. Did you have an attorney at Athens then?

A. I really don't know and don't know our attorney outside of Louisville. Mr. Goldsmith has charge of that branch of the business.

Q. Then you had nothing to do with placing a claim in the hands of an attorney after this matter came up?

A. No, sir; Mr. Goldsmith attends to that.

Q. These notes that were given by Warten—the notes that fell due in the early part of the year—amount in the aggregate to $3,000, do they not?

A. Yes, sir.

491 Q. I understand you to say that the understanding was that he was to give you notes for that $3,000, to fall due as

there indicated, and for the balance he was to give notes payable in the fall and winter.

A. Yes, sir.

Q. And that indebtedness of $216 balance was not due at the time the transaction occurred, but fell due February 1st, 1890?

A. Yes, sir.

Q. And it was omitted from the statement in the way you said?

A. Yes, sir.

Q. Did you get an answer to that telegram you sent to Schoolfield, Hanauer & Company?

A. Yes, sir. (Reads:)

"MEMPHIS, TENN., *Jan.* 13, 1890.

To Bamberger, Bloom & Co., Louisville:

Our Mr. Miller is at Athens. We have no particulars.

SCHOOLFIELD, H. — COMPANY."

Q. Where is the telegram you sent them?

A. It is on our copy book here. (Reads:)

"JAN'Y 13TH, 1890.

To Schcolfield, Hanauer & Co., Memphis, Tenn.:

Reported here you bought out Henry Warten. Is it true? Are we preferred?

BAMBERGER, BLOOM & CO."

Q. Did you ever receive any other communication from Schoolfield, Hanauer & Company in reference to the indebtedness of Warten to your firm except this letter he brought you?

A. Not to my remembrance, sir.

492 Q. Did you ever have any communication with them, either verbal or in writing, in reference to that indebtedness, except that letter?

A. None, except the letter we wrote them at the same time we sent this telegram.

Q. Where is that letter?

A. It is in our copy book.

Q. Did you send a telegram to Warten?

A. Yes, sir; sent the same telegram to Warten: "Understand you have sold out to Schoolfield, Hanauer & Co. Are we preferred?"

Q. Did you get any answer to that?

A. No, sir.

Q. Was that sent on the same day and at the same time?

A. Yes.

Q. The letter that you sent to Schoolfield, Hanauer & Company, did you get any answer to that?

A. No, sir.

Cross-examination by R. A. MCCLELLAN, Esq.:

Q. You spoke of your inexperience in the U. S. court; have you ever been in the city court or police court?

A. All of them.

Q. Then you are no new hand on the witness-stand?
A. I don't know that I was ever in a court as a witness half a dozen times in my life.

Q. You said you don't force anybody; how many attach-
493 ments have you run on unfortunate merchants in the last few years?

Plaintiffs object to this question.

Q. How long have you been connected with the firm of Bamberger, Bloom & Company?
A. For the last 25 years.
Q. Is it not a rule with your house to run an attachment against the property or effects of all of your customers that do not give you preference?
A. We are not known for that kind of business, sir.
Q. Tell me how many attachments you have run.
A. I could not tell unless I had the books here. Our State does not allow any preferences. We have different laws in our State.
Q. Is there any other States in the Union that does not give a man a right of preference?
A. I think so, sir.
Q. Who is the man in your house that you require to look after all this litigation and proceedings against broken merchants?
A. We have a credit man, who has charge of that.
Q. That is Mr. Goldsmith, is it not?
A. Yes, sir.
Q. How long has he been engaged in that business?

A. I don't remember exactly; it has been several years
494 since Mr. Bloom's death.

Q. How long has he been dead?
A. Three years, I think.
Q. You sent a telegram to Henry Warten on Monday, January 13th. Have you got that telegram?
A. Yes, sir.
Q. I believe you said you asked if you had been preferred?
A. Yes, sir.
Q. What is the magnitude of your business?
A. I suppose between $3,000,000 and $4,000,000 a year.
Q. A large amount of that is transacted by employees?
A. Yes.
Q. What do you mean?
A. I mean letter-writing, etc.
Q. You don't keep the books?
A. No, sir.
Q. Was this interview with Warten had with you?
A. Yes, sir.
Q. Anybody else present?
A. No, sir; not to my knowledge.
Q. You did not write to Schoolfield, Hanauer & Company till the 13th day of January?
A. I did not think it was necessary.

Witness for Claimants.

Claimants then introduced HENRY WARTEN (recalled), who testified as follows:

Direct examination by R. A. MCCLELLAN, Esq.:

495 Q. Are you acquainted with W. C. Stewart, whose deposition has been read in this case?

A. Yes, sir.

Q. Was he a customer of yours?

A. He was, sir.

Q. Did he trade with you last year?

A. Yes, sir.

Q. What amount of claims did you have on him before you broke?

A. There was a claim against him which was turned over to the assignee.

Q. His claim was not transferred to anybody but the assignee?

A. No, sir.

Q. Did you have any claim on any hand of his on his place?

A. Yes, sir; I had one against Mose Harris, a colored man.

Q. Is he a witness, brought here by the other side?

A. Yes, sir.

Q. What sort of claim was that?

A. Mr. Stewart owed me several hundred dollars last year; he came into the store and said, "Henry, I have an awful short crop and I don't see how I can pay you. One of my hands owes me for two mules and an accounts besides, and if you could take that one man you will do me a special favor." I said, "Well, you have been a good customer of mine, and I will do it."

Q. What was the amount of those claims?

A. Over $200, I think, and Mose Harris had an account of
496 his own, which made it over $300; that claim I transferred over to the corporation.

Q. When?

A. On January 13th, 1890.

Q. Did Stewart come in and see you about it?

A. I think it was about two or three days afterwards he met me on the street and said, "I can't get any merchant here to run my man, and I hate to lose him; he is one of the best I have." I said, "What's the matter?" He said, "There is a mortgage over there on record; the merchants say they won't run him." I said, "It looks to me like any of these merchants would accommodate you that much and run your hand." He said, "They won't do it." About a week later this man Mose Harris—he was a pet of mine—come up and says, "Mr. Warten, I can't get nobody to run me here."

Q. If I understand you, Stewart had a hand who owed you some money?

A. Yes, sir.

Q. Stewart, before you broke, transferred his claim on Mose Harris to you?

A. Yes, sir; and I transferred it back by mortgage of Mose Harris.

Q. When was that?

A. I think it was the latter part of December or the early part of January.

Q. Was that claim one of those you transferred to School-
497 field, Hanauer & Company?

A. It was.

Q. Was it or not the understanding that you would run the negro the next year?

A. That was the contract.

Q. Stewart came to you about the account and said he couldn't get anybody to run him. Did you make any efforts to get anybody to run him?

A. I did.

Q. Did you in any interview you had with Stewart tell him you would be all right in a short time?

A. No, sir; I did not.

Q. Who did Stewart get to run the negro this year?

A. Miller.

Q. Why was that? Did you tell him you would get somebody to run him?

A. Yes, sir. Stewart came to me and said, "Mose Harris is going to quit. He can't get anybody to run him, and I had rather lose any of my hands than him." I told him I would see Mr. Miller, & if I could have any influence I would tell him and advise him to protect his claim.

Q. What did the negro have there to protect his mortgage?

A. Two mules.

Q. What was the amount of the debt?

A. $300.

Q. What would the mules have sold for?

A. Not more than $125. I told Mr. Miller, "You hold a claim against Mose Harris for $125 and something," and I told him
498 what Stewart had said, and I told him, "I have no idea the mules would bring more than $125, and my advice would be to furnish him; he don't owe more than $50 or $75."

Q. Did he run him from the store at Athens?

A. Yes, sir.

Q. Do you know whether that negro will be able to pay that debt this fall or not?

A. He will, I think.

Q. Then, if I understand you, when Stewart applied to you about this hand and said he could not get anybody to run him you told him you would do what you could?

A. He asked me to use my influence with Mr. Miller.

Q. And that is all the transactions you had with either Stewart or Mr. Miller in reference to this?

A. Yes, sir.

Q. Did you have any interest in it?

A. No, sir.
Q. Do you know John T. Stewart, a witness here?
A. I do, sir.
Q. Did you have a debt against him last year?
A. Yes, sir.
Q. Do you remember the amount of it?
A. He owed me $100 or $200, and he paid it down to about $60. I think it was $60 he owed when I failed.
Q. Was that transferred?
A. It was transferred to the corporation of the Schoolfield, Hanauer Company.
Q. On the 13th day of January, 1890?
A. Yes, sir.
499 Q. What did you have to do with that claim after you transferred it to the Memphis corporation?
A. It was two or three, maybe four, weeks afterwards that Mr. Walter Miller asked me who that man, J. T. Stewart, was. I said, "He comes in here once or twice a week." He asked me to point him out the next time he came, which I did. Walter Miller approached him and I don't know what they said. A few days after Walter Miller said he had seen him again and a few days after that he had seen him again. So, finally, J. T. Stewart stopped me on the street and said, "Look here, Walter Miller came here and told me he would sue me. You tell him he can go to hell before I will pay him a dollar if he sues me." And about a week or two later he came to Miller and said he would be in that evening and pay him. That evening he came back and said he would be back Tuesday and pay him some. So Walter Miller told him, "If I am not here—I am going to Birmingham—you can pay Mr. Warten the money." So when Walter Miller went to Birmingham I said, "You had better give me an order," and so Walter Miller wrote me an order then. See page 233.
Q. Who signed that order?
A. Walter Miller.
Q. Did you draw it up?
A. Yes, sir.
Q. What is the date of that?
A. April 14th, 1890.
500 Q. Did you show that order to Stewart or endeavor to do it?
A. He came back to the desk and said, "All I can pay today is $20; write me a receipt for that." I said, "Here is an order to show whether I was authorized to collect." He says, "Dam- the piece of paper; I don't want to see it."
Q. Did you or not tell Mr. Stewart to tell Mr. Miller, if he said anything to him about that debt, to kiss him in an improper place?
A. I think I would have had better taste. If I wanted Mr. Walter Miller to do such a business as that, I would send him to cleaner specimen.
Q. You told him no such thing?
A. I did not.

Q. And that is all you had to do with John T. Stewart?
A. That is all, as far as I know.
Q. Did Mr. Walter Miller go to Birmingham that day?
A. He went before that—Tuesday.
Q. Was he or not down there on that day?
A. Yes, sir; he was.
Q. Is Stewart friendly or unfriendly to you?
A. He is unfriendly.
Q. Do you know one bald-headed man called "Boss" Woods?
A. I do.
Q. Is he the successor of Mr. McGavock as assignee?
A. He is.

501 Q. Have you or not urged McGavock or Wood, either or both of them, to get up evidence and bring suit against John W. Strain to recover for what you lost at that Elkmont store?

A. Yes, sir; and I told them, furthermore, that he had recently purchased between $2,000 and $3,000 worth of goods in Hartselle, Alabama, in his sister's name. I told Mr. Wood to go to Hartselle and look around.
Q. Did he go?
A. He did not.
Q. Did he or not go to Decatur to see about it?
A. He did.
Q. What sort of a book-keeper is Wood, if you know?
A. I don't think he is much of a book-keeper.
Q. Is there a list of your liabilities among your books here?
A. Yes, sir; every one of my creditors.
Q. What, in your opinion, being acquainted with most if not all of the parties against whom the assignee has these debts—what ought a reasonable, diligent, prudent assignee to get out of those assets?
A. He ought to get $20,000.
Q. Do you think you could get that much?
A. I do.
Q. How old are the most of those debts?
A. There are some few—maybe two or three thousand dollars' worth—old, but the balance are new—the bulk of them last year's.

502 Q. Mr. Woods spoke about some exemptions; how much money did you get out of your exemptions under the general assignment?

A. Eight hundred and some odd dollars.

Q. You did not get anything but what is specified in the schedule attached to the general assignment?
A. That is all.
Q. Do you know how much Mr. Woods has collected?
A. I do not.
Q. Has he been diligent or not?
A. He has been very diligent.
Q. What do you mean by that?
A. He has been very kind to people this year.
Q. Was he appointed by the court the register in chancery?
A. Yes, sir.

Q. He gave bond?

A. He did.

Q. Do you know anything about the stock of goods W. S. Martin's firm bought from Rosenau?

A. I saw it a few days afterwards.

Q. Is that the firm you were a clerk for for a good many years?

A. Yes, sir.

Q. Do you remember what they gave for that stock when they bought Rosenau out last January was two years ago?

A. He had got his stock down to about $4,000 or $5,000. I heard the boys themselves say that they paid 80 or 85 cents on the dollar, but that the reason they paid that was to get Rosenau's business.

Q. From your knowledge of the goods as a merchant, was that high or low or right?

503 A. They were worth about 40 or 50 cents on the dollar. I never saw a dry-goods stock in my life, after a merchant had been in business over two years, that was worth more than that unless he was trying to get the man's house and lot and all.

Q. Rosenau left there, did he?

A. Yes, sir; went to Chattanooga.

Q. How long did he stay there?

A. One or two years.

Q. Did you or not, after you broke and your old customers were turned loose, recommend men to Glaze, Martin and Company?

A. I did.

Q. Did you or not, in more instances than one, endeavor to get Miller to run some of these old customers of yours?

A. I did.

Q. How many did you get him to run?

A. Mose Harris. He sold him a few dollars—$40 or $50—and then there was another party, J. W. Williams.

Q. He has been a witness here on the other side till this evening?

A. Yes, sir.

Q. What was the transaction Miller had with him, if any? Did Mr. Miller know Mr. Williams?

A. He did.

Q. He was one of your customers before that?

A. Yes, sir; Mr. Williams came to me in February and told me he would get some money from his son-in-law in Birmingham.

Q. You were clerking there at that time?

504 A. Yes, sir; and Mr. Williams brought about $20 that day and remarked, "I will pay cash as soon as I get the money from my son-in-law," and a few days afterwards he came in and said his son-in-law did not have the money, and he asked me to get Mr. Miller to run him, and I saw Mr. Miller and he run him.

Plaintiffs object to this evidence. Objection overruled. Plaintiffs except to this ruling of the court.

Q. You had no interest in that?

A. None whatever.

Q. Was Everett Hartsell indebted to you last year?

A. Yes, sir; very largely.
Q. What was he due you on January 1st last?
A. I suppose his individual account would amount to between $1,200 and $1,400.
Q. Did you let him have any mules in the spring?
A. Yes, sir.
Q. What kind?
A. Some of them large ones.
Q. What did you sell them at?
A. Some at $140 apiece.
Q. Do you recollect the whole amount?
A. I do not.
Q. Was it or not $550?
A. I could not tell unless I saw the books.
Q. Was it about that?
A. Yes; about that, I think.
Q. What time did you let him have the mules?
505 A. Last year; in the latter part of January or the early part of February.
Q. Did he get goods from you during the year?
A. Yes, sir.
Q. Did you take a mortgage?
A. I took one or two.
Q. How much did he pay on the debt before you broke?
A. But very little, sir.
Q. How much cotton, if you remember?
A. I don't remember.
Q. What about the mules, then?
A. He told me in the early part of November, "Henry, I am in an awful fix and I don't know what I am going to do with you, and I want you to take all my young mules in. I can make out with my young mules to pay my accounts." I told him, "Then you do that; I wish you would take good care of those mules and get them fat, so they will bring a fair price."
Q. Did you tell him you would let him have other cheaper mules?
A. I told him I would have to take in other cheaper mules from the Elkmont store to offset that, and he said he would rather have them to reduce his account.
Q. Did he bring the mules in or you send for them?
A. He brought them in.
Q. What time did you get them?
A. About the 3rd or 4th of January.
Q. They were in the drove you sold to Miller?
A. Yes, sir.
506 Q. Did you see Hartsell after you broke?
A. I did.
Q. What took place?
A. He met me on the street; I was just going home, and he came out of the saloon and says, "Henry, old boy, I'm mighty sorry you broke; ain't there no chance?" I said there was none. That was

all the conversation that day. Sometimes after that he came in again and met me on the street. I had taken some corn in from the place. One man that rented the same place he did owed me one hundred dollars and somethings and wanted me to take corn for his rent, and I told Hartsell to take care of that corn and measure it out and let me know how much it was. I took 60 barrels from this man and 12 barrels from another man. I had sold 40 barrels in November, and that left 32 barrels. Hartsell told me, "Henry, I am bound to have that corn;" and I said, "You must see the assignee," and I informed the assignee, & he sent out there, and when the man went out there he said there was not as much as he though- there was.

Q. Did you at any time or anywhere tell him that Mr. Miller would do anything you told him to?

A. I did not.

Q. Did he call for a receipt for what you had gotten from him?

A. No, sir; he did not.

Q. What was the amount got from him when you made the assignment?

507 A. I think nearly $1,000.

Q. Did he afterwards come to you in company with Mr. Tom Sanders?

A. Yes, sir. I was standing at the desk, and Mr. Sanders came in and said, "Mr. Warten, Mr. Hartsell says he don't owe a dollar; I have a claim here from the Louisville Banking Company on him." I said, "I don't suppose he means that." I opened the books and looked, and I said, "Everett, your individual account is so much," and he acknowledged that he did owe it before he walked out.

Q. How much did he pay on it, if anything?

A. I have no idea. I think Mr. Sanders treated him very kindly, though.

Q. Do you know whether Hartsell got a mortgage?

A. The assignee has not got it.

Q. That mortgage had been transferred to the Louisville Banking Company?

A. Yes, sir.

Q. And that was part of the collateral you had collected before the last debt was paid?

A. Yes, sir.

Q. After your Louisville debt was settled was or not the balance of the collaterals of the Louisville Banking Company turned over to the assignee?

A. Yes, sir.

Q. That mortgage has never reached the hands of the assignee, so far as you know?

A. It has not.

508 Q. Did or not Mr. Miller, in your presence, ever tell Mr. Hartsell to go ahead; it was all right?

A. I never heard of such a thing.

Q. Was he ever in your store during these conversations with Mr. Sanders?

A. He was not, sir.
Q. You broke on Monday, January 13th, 1890?
A. Yes, sir.
Q. What night were you taken sick?
A. Wednesday night.
Q. About what time?
A. About supper time.
Q. Were you back at that store during the balance of that week?
A. I was not. I was sick for two or three days; never came uptown until the next Monday.
Q. Was the doctor to see you on Thursday?
A. Yes, sir.
Q. To see you on Wednesday night?
A. Yes; all of them in town.
Q. Then you were not uptown at the store until the next Monday?
A. No, sir.
Q. Mr. Warten, something was said here about your having bought some cotton from Dave Yarbrough or Mr. Witty or from the wagons after you broke; state to the jury what you had to do with each lot of cotton.
A. After I sold out, two or three days, Mr. Miller called me up one time and said, "Henry, I wish you would go over to Mr. Sykes' warehouse and sample a lot of cotton." He said, "It's the
509 Yarbrough lot." He said, "I don't know nothing about cotton; I don't know how to grade it." I went over and made an examination, and returned and told Mr. Miller about it.
Q. Did you have any interest in that?
A. No, sir.
Q. Did you pay for it?
A. No, sir.
Q. Do you know who did?
A. I do not. I suppose Mr. Miller did.
Q. Did you sample any cotton from Mr. Witty's place?
A. Yes.
Q. When was that?
A. Several weeks after, while I was in the employment of Schoolfield, Hanauer & Company. Walter Miller told Mr. Witty he wanted a lot and authorized me to buy it.
Q. Does Mr. Walter Miller know anything about sampling cotton?
A. He does not.
Q. What price was given for it?
A. I think it was purchased at $10.10.
Q. Did you have any interest in it?
A. I did not.
Q. Did you pay for it?
A. I did not.
Q. How much cotton did you buy off of wagons during the remainder of that season?
A. Three or four bales.

Q. Did you buy for yourself?
A. No, sir; for Schoolfield, Hanauer & Company.
510 Q. Did you pay for that?
A. No, sir.
Q. Did you have any interest in it?
A. I did not.
Q. Do you know who did pay for that cotton?
A. I know Walter Miller paid for the Witty cotton and Walter Miller or Mr. H. G. Miller paid for the Yarbrough lot.
Q. Something was said here about some cheap coats in your inventory. I wish you would tell if you know anything about that.
A. Yes, sir.
Q. Any coats there put down at one dollar?
A. Yes, sir.
Q. What sort of coats were they?
A. Pawnbroker goods. It is what they call second-hand clothing.
Q. Second-hand clothing put in pawn by somebody?
A. Yes, sir.
Q. To be sold out in a certain length of time if not called for?
A. No, sir; I purchased them in New York last winter.
Q. How many did you buy?
A. I bought at one invoice $660 worth of goods—coats, overcoats, cloaks, & vest-.
Q. What did those coats cost?
A. One dollar.
Q. What are they put at on the invoice?
A. One dollar.
Q. Are there any cloaks on there put at 50 cents?
A. Yes, sir.
Q. What sort of cloaks were they?
A. The same quality of good-.
511 Q. What did you give for them?
A. 50 cents.
Q. Any ladies' beaded capes or mitts on there?
A. Yes, sir; there are three different grades—3 at $2, 3 at $5, and 3 at $6.
Q. Did you tell Mr. Markham anything about those when the inventory was taken?
A. I did.
Q. What did you tell him?
A. I was back at my desk, working on the books, when he called out some of those at $6. I said, "I would like to sell you some of those at $5. We have not sold any during the year and they are out of style, and I doubt whether we could invoice for them."
Q. What has become of them since?
A. They are still there.
Q. What about these mitts? Did you tell him anything about them?
A. I did. He called out one lot at either $30 or $32.
Q. $32 apiece?

A. No, sir; for the whole lot. I said, "I did not know there was any like that there." We have sold them at $5.50 since.

Q. What are they put down at on the inventory?

A. One lot of gloves, $30.

Q. They were sold at $5?

A. I think about that—$5 or $6. The reason I know was because I sold them out to the Decatur Mercantile Company at that
512 price.

Q. For Schoolfield, Hanauer & Company?

A. Yes, sir.

Q. Are any articles on that inventory put above cost?

A. Yes.

Q. Many or few?

A. A good many of them. Here is 65 yards of drilling at 8 cents for which I paid only six and three-fourths in the market. He has got down cheviots 12 cents which only cost 10. He has got down 400 yards of bagging at eight and three-fourths cents.

Q. What was the cost of that at that time?

A. It was less than that.

Q. Was that cotton bagging?

A. Yes, sir. He has got 1,705 yards of calico at 5½ cents. Some of it cost originally 3¾, 4¼, 5, and some of it cost 5½.

Q. Did you criticize any but those two items in the presence of Mr. Markham?

A. No, sir; that is all.

Q. Who added up the inventory?

A. John B. Tanner.

Q. Did he make any mistake in it?

A. He did.

Q. What was the mistake?

A. He has got added up $3,693; it should have been $4,093.

Q. Is Tanner a capable man about books?

A. He is what I consider a pretty fair assistant.

513 Q. What did you have to do, if anything, with the wages of Mr. Markham?

A. After I was employed by Mr. Miller I had asked him what he was paying Mr. Markham. He told me he was paying him $1 per day. I said, "Mr. Miller, that man can't live on a dollar a day; he has a family and children to support. You ought to pay him more than that." He said, "Well, just tell Walter to give him a dollar and a half a day." He told me to tell Mr. Markham so, and I told Mr. Markham I had spoken a good word for him, and that he would pay him a dollar and a half per day now.

Q. That is all you had to do with that?

A. That was all.

Q. What time was that?

A. About the time he had engaged me in February.

Q. Mr. Markham had been with you for several years, had he?

A. Yes, sir.

Q. While you were working for the assignee, Mr. McGavock, what did you do for him?

A. He made me do all the writing. I wrote, I suppose, about 1,000 letters for him to different parties to notify them that their claims were in the hands of an assignee. I done all his corresponding.

Q. All in his name?

A. Yes, sir.

Q. And for him?

A. Yes, sir.

Q. What did you do to the books and accounts and claims?

514 A. I squared them when settled by note.

Q. After you broke what, if anything, did you have to do with one L. L. Weir? Just before your general assignment were any claims transferred by you to Hess, Henle & Company?

A. They were.

Q. Among them was there one on Mr. Weir?

A. There was.

Q. Do you remember what amount?

A. Either $70 or $80.

Q. How many claims were transferred by you to them?

A. About $2,500 worth?

Q. Do you know who the agent of Hess, Henle & Company was to look after those claims?

A. I do.

Q. Who was it?

A. Mr. James F. McGavock.

Q. Do you know whether any of the house of Hess, Henle & Co. was personally acquainted with Mr. McGavock?

A. Yes, sir; Mr. Wolf and Mr. Henle were.

Q. Have either or both of them been in Athens?

A. Yes, sir.

Q. What did you do, if anything, in reference to Weir's matter?

Q. Mr. Weir came in one day and said, "I came to pay $20 to Hess, Henle & Company." I told him he had to see Mr. McGavock. He said he had seen Mr. McGavock, and he had sent him back there, and I think he paid me the $20. Mr. McGavock authorized me to write the receipt.

515 Q. That was all you had to do with the $20?

A. Yes, sir.

Q. Did you have anything more to do with Mr. Weir?

A. Mr. Weir came in again and paid $60 first, and then he remarked, "I had better pay that $8.80 and take up my papers."

Q. What happened then?

A. Mr. McGavock authorized me to write the receipt, I think, and also to deposit the money in the bank at Athens.

Q. Did Mr. McGavock write on there "Settled in full"?

A. Yes.

Q. Did he look after their matters for some time?

A. He did.

Q. Did you have any interest in that transaction?

A. I did not.

Q. Did you do it for yourself or at his request?

A. At his request.

Q. What connection did you have, if any, with one A. M. Donham? Was he a customer of yours last year?

A. He was.

Q. To what extent?

A. Several hundred dollars.

Q. Did you have a mortgage on his property?

A. I did, on his crop of cotton and corn and on four head of stock.

Q. Was that mortgage transferred to anybody by you as collateral security?

A. It was transferred to the Louisville Banking Co.

Q. When did they get it?

A. They have had those claims the whole of last year, nearly.

Q. How far back?

516 A. It was either in February or March that I borrowed $7,000 from them.

Q. You deposited collaterals to what amount?

A. I had borrowed $7,000 and I deposited with them $14,000 worth of mortgages, deeds, and 150 shares of Decatur stock. I had given them one note of $3,000, which fell due November 1st, which I paid. The other note of $4,000 fell due December 1st. When I paid them the $3,000 I wrote to them to return me $7,000 of deeds, which they did. When the $4,000 note fell due I wrote to them to let me pay $2,000 and give a note for the other, and they would not do it, and I then wrote to them offering to pay 8 %, and I sent them a check on the Athens bank for $2,000. They returned it and demanded Louisville exchange, and for me to pay the difference, and I sent it to them, and I put in upwards of $10,000 worth of mortgage deeds, and I wrote: "Enclosed find my note of $2,000. Please return to me my Decatur stock. I expect to sell it and realize the money." They wrote back: "As the mortgage deeds are more serviceable to you than to us, we prefer retaining the Decatur stock."

Q. They never returned you those collaterals?

A. No, sir.

Q. Did they sell your Decatur stock?

A. They sold that for about $1,600.

Q. Who was agent for the Louisville Banking Company?

A. Mr. Sanders was their agent.

Q. Mr. Donham's mortgage was held by them?

A. Yes, sir.

Q. Did he come to see you about it?

517 A. Yes, sir.

Q. What was said?

A. I don't know whether it was Mr. Dunham that come or not; I think he was one of them. He said he had received a notice from the Louisville Banking Company, wanting to know what was embraced in the mortgage. I told him the Louisville Banking Company had given me authority to take these mortgage debts. He said he had still two head of stock under the mortgage. I said,

"That belongs to the Louisville Banking Company until they are paid." The next thing, Mr. Tom Sanders brought him in and said, "Mr. Warten, how much does Mr. Donham owe?" I said, "About $135." He said, "Mr. Donham don't want to pay that; he says he only intended to give a mortgage on one horse in place of the two." I said, "I don't suppose he will say that in my presence; that is something I never heard of." And the next thing I heard he had paid Mr. Sanders in cash the amount due the store.

Q. Did you or not on any occasion tell Mr. Donham not to be in a hurry; that you would be all right in a few days?

A. I did not.

Q. What was the occasion of his coming to you the first time?

A. To see about the Louisville Banking Company.

Q. Did you tell him it would be all right; not to trouble about that?

518 A. No, sir; there was nothing spoken about the letter.

Q. What was said by him, if anything, about getting notice and your getting property from him under a mortgage which another man had?

A. He said he received a letter from the Louisville Banking Company. I said, "The Louisville Banking Company has given me permission and I considered it my property," and I said, "If there is any balance, you will have to pay to them until they are paid."

Q. Did you tell him anything about your setting up in business or anything of that kind?

A. No, sir; I did not.

Q. When Mr. Sanders brought him to you you stated that he did owe the money?

A. Yes, sir; he refused to pay it and said that he had not given a mortgage on the stock and could not sell the stock. I said, "You certainly wan't say that in my presence."

Q. Were there any claims in the hand of an attorney or other person against you for collection before you broke?

A. Yes, sir; there was one of $1,600 and one of 400 and some odd dollars.

Q. Were you informed by any association anywhere that anything else was out against you?

A. I was.

Q. What was that?

A. R. G. Dun's agency in Nashville wrote me in Novem-

519 ber that they held a claim of $400 and something, and that unless I sent a check by return mail they would be forced to sue at once.

Q. In commercial circless will or not a suit destroy a man's credit or badly impair it?

A. Yes, sir.

Q. What attorney had any claims against you in Athens?

A. Mr. Ryan Walker.

Cross-examination by MILTON HUMES, Esq.:

Q. What did I understand you to say you considered collectible on those claims you assigned to the assignee?

A. About $20,000.

Q. How much was your outstanding liability as shown by that statement you had the other day?

A. About $12,000 or $13,000. The statement shows $15,000, but the Louisville Banking Company's debt of $2,000 was included, and the Decatur stock was not put in the assets of the assignee, and that about paid the whole debt.

Q. You say that where claims are put in the hands of an attorney against a merchant situated as you were it would destroy his credit?

A. No; he asked me about R. G. Dun's commercial agency.

Q. He did not ask you about what effect suits brought on a merchant situated as you were would have on him?

A. He did.

Q. Would it destroy his business so he could not continue in business?

520 A. He might continue business under many disadvantages, but it would ruin his credit.

Q. These books showing your liabilities—they were in the hands of your assignee?

A. Yes, sir.

Claimants then introduced JAMES F. MCGAVOCK (recalled), who testified as follows:

Direct examination by R. A. MCCLELLAN, Esq.:

Q. Do you know Hess, Henle & Company?

A. Yes, sir.

Q. After the failure of Henry Warten did you ever act as their agent in regard to *and* matter?

A. Yes, sir; I was their agent in the collection of accounts.

Q. Do you know any of the firm of Hess, Henle & Company?

A. Yes, sir; I knew Mr. Henle and Mr. Wolf.

Q. Have you got the authority on which you acted?

A. I have.

Q. These papers were received by due course of mail and telegraph?

A. Yes, sir.

Claimants offer the following papers in evidence:

"LOUISVILLE, KY., *Jan.* 22, 1890.

"To James McGavock, Athens, Ala.:

"Attend to our claims transferred to us by Henry Warten.

"HESS, HENLE & CO."

521 "LOUISVILLE, KY., *Jan.* 22, 1890.

"Mr. James McGavock, att'y-at-law, Athens, Ala.

"DEAR SIR: We telegraphed you this day, requesting you to attend to our claims transferred to us by Mr. Henry Warten. We trust our message was promptly delivered to you, and that you will give same you- attention. If you should desire a memorandum of these claims or the original papers, kindly advise us, and we will forward same promptly. If you deem it necessary, wire us.

"Very respectfully, HESS, HENLE & CO."

Q. Under that you took charge of those claims?
A. Yes, sir.
Q. Did you get a claim against Mr. Weir?
A. Yes, sir.
Q. Do you know how it was settled?
A. Yes, sir; it was settled with me.
Q. Was the money paid to you?
A. Mr. Warten, who was acting for me, got the money.
Q. What was done with it?
A. It was deposited in the bank.
Q. How came him to have anything to do with it?
A. Mr. Warten was acting for me, strai-tening up the books. When Mr. Weir came to the store to settle I was busy and sent him back to Mr. Warten.

522 Q. Was that mortgage marked satisfied by you?
A. Yes, sir.
Q. And the money was deposited by him?
A. Yes, sir.

Cross-examination by MILTON HUMES, Esq.:

Q. How much did you collect for Hess, Henle & Company?
A. I don't remember just the amount; there was $20 from him, the first payment, and about $60 afterwards was all in money that I recollect.
Q. What was the amount of the claims transferred to Hess, Henle & Company by Henry Warten?
A. I don't remember.
Q. Did you make any efforts to collect any other claims?
A. I did; I tried to collect a mortgage on William Cunningham for, I think, about $148.
Q. Did you collect that?
A. No, sir.
Q. Was there any other?
A. I don't remember that there was.
Q. How long were you their agent?
A. They have never taken it out of my hands yet.
Q. Have you charged them anything for your services?
A. I have never made any charges except for my trips I have taken.
Q. What did Warten charge them for his services?

A. Nothing that I know of; he was working for me when he received this money.

Q. That was for the other creditors?

A. Yes; I was representing the other creditors.

523 Q. You did not allow him anything for assisting you about Hess, Henle & Company?

A. No, sir.

Q. How much did you collect for the creditors under the general assignment, in money?

A. I don't know the amount. I think about $900; it might have been more or less.

Q. How much did you turn over to your successors?

A. Very little. I don't think he got but a few dollars.

Q. What did you do with the rest of it?

A. I paid Mr. Warten's exemptions out —, which was, I think, about $900.

Q. Did you pay him all you got?

A. No, sir; I paid the expenses and I paid myself.

Q. How much did you charge?

A. 5 % or 10 % on the collections.

Q. You paid Warten at the rate of six dollars per day and his exemptions?

A. Yes, sir.

Claimants then introduced H. G. MILLER (recalled), who testified as follows:

Direct examination by DAVID POSTON, Esq.:

Q. Do you know anything about the wages of Mr. Markham being raised?

A. Yes, sir.

Q. How did that come about?

A. When I was up there Mr. Warten came to me and said that he thought it was wrong to have a man with a family work-

524 ing for one dollar a day, and that he could not live on it, and I give him $1.50. I told Warten to pay him $1.50.

Q. Did the dollar and a half last all the time he was there?

A. I thought so until the other day, when Mr. Markham said that he was only paid that from the time I raised it and not from the time he was employed.

Q. Then it was by your authority that his wages were raised?

A. Yes, sir.

Q. State, if you remember, the substance of your conversation, if you had any, with Mr. Raisler at Decatur.

A. What I said was that I was sorry Warten sold out; that I had rather lose $3,000 than for him to fail, because I was satisfied I would lose $6,000 or $7,000.

Q. Have you lost anywhere in the neighborhood of that?

A. I have lost $6,100.

Q. What did you tell him Warten owed you?

A. I said Warten owed me $20,000.

Q. Did you say anything about $17,000 or $27,000?
A. No, sir.
Q. Did you ever have any conversation with Everett Hartsell?
A. I don't recollect. I was introduced to so many men there that I don't know.
Q. Did you ever have anything to do, in a business way or otherwise, with any claims the Louisville Banking Company had on him?
A. No, sir; I don't know anything about it.
525 Q. Did Henry Warten ever tell Everett Hartsell in your presence that he would be all right in a few days?
A. Not that I know of.
Q. In that connection, did Henry Warten ever tell Everett Hartsell that you would do anything he said?
A. If he did, that is something I never done for anybody in this world.
Q. Was there any such conversation in your presence?
A. No, sir; not that I know of.
Q. Did you tell him that it was all right, go ahead?
A. No, sir.
Q. Was there any such conversation in the presence of anybody that you would do anything Henry Warten said?
A. No, sir.

Plaintiffs offer in evidence the following deed to the lot in Elkmont from Henry Warten and wife to Schoolfield, Hanauer & Company:

"STATE OF ALABAMA, }
"*Limestone County.* }

"Know all men by these presents, that we, Henry Warten and Mattie A. Warten, his wife, for and in consideration of five hundred dollars to us in hand paid by Schoolfield, Hanauer & Company, the receipt whereof is hereby acknowledged, do convey, grant, bargains, sell, enfeoff, assign and confirm unto the said Schoolfield,
Hanauer & Co. the lot and storehouse thereon formerly owned
526 by J. C. Vance, now owned by me, Henry Warten, in Elkmont, Limestone county, Alabama. To have and to hold the aforegranted premises to the said Schoolfield, Hanauer & Co., their successors and assigns, and we do covenant with the said Schoolfield, Hanauer & Co., their successors and assigns, that we are lawfully seized in free of the aforegranted premises; that they are free from all encumbrance that we have a good right to sell and convey the same to the *same to the* said heirs and assigns: and that we will warrant and defend the premises to the said Schoolfield, Hanauer & Company, their successors and assigns forever, against the lawful claims and demands of all persons.

"In witness whereof we the said Henry Warten and Mattie A. Warten have hereunto set our hands and seals this — day of Jan-

uary in the year of our Lord one thousand eight hundred and ninety.

"HENRY WARTEN.
"MATTIE A. WARTEN.

"Signed, sealed, & delivered in the presence of—
"—— ——.

"THE STATE OF ALABAMA, }
"*Limestone County.* }

"I, Ben. Lee Allen, clerk of circuit court in and for the said county, in said State, hereby certify that Henry Warten and Mattie A. Warten, his wife, whose names are signed to the foregoing
527 conveyance, and who — personally known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, they executed the same voluntarily on the day the same bears date.

"Given under my hand this the 9th day of January, 1890.

"BEN. LEE ALLEN,
"*Clerk Circuit Court.*

"The foregoing conveyance was filed in the office of the judge of probate of Limestone Co., Ala., on the 14th day of January, 1890, at 8 o'clock a. m., and duly recorded on the 16th day of January, 1890, in Deed Book 33, on page 564, &c.

"JAMES E. HORTON,
"*Judge of Probate.*

"THE STATE OF ALABAMA, }
"*Limestone Co.* }

"I, James E. Horton, judge of the probate court in and for said county, in said State, hereby certify that the foregoing is a true copy of deed as found of record in this office.

"Given under my hand and official seal this the 26th day of April, A. D. 1890.

"JAMES E. HORTON,
"*Judge of Probate Court.*"

Witnesses for Plaintiffs.

Plaintiffs then introduced JOHN T. STEWART (recalled), who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. Did you ever get a notice through the mail from Mr.
528 Miller to the effect that he would sue you if you did not pay the balance you owed?
A. No, sir.
Q. Did Mr. Miller ever threaten to sue you?
A. No, sir.

Q. Did Mr. Warten ever come to you and tell you that Mr. Miller was going to sue you, or anything of that sort?

A. No, sir.

Q. Did you ever tell Warten that if Miller sued you, "tell him to go to hell?"

A. No, sir; nothing of the sort.

Plaintiffs then introduced JULIUS BAMBERGER (recalled), who testified as follows:

Direct examination by MILTON HUMES, Esq.:

Q. Look at this letter (handing witness letter-press copy book of Bamberger, Bloom & Company, containing, on page 442, the copy of a letter alleged to have been written by Bamberger, Bloom & Co. to Schoolfield, Hanauer & Co. on January 13th, 1890), and state whether or not that letter was written by your firm, on the day it bears date, to Schoolfield, Hanauer & Co., Memphis, Tennessee, and whether or not it was mailed on that day.

A. It was written by our house and signed by myself and mailed.

Q. In the usual course of mail?

A. Yes, sir.

Plaintiffs offer the letter book of Bamberger, Bloom &
529 Company containing this letter and this letter itself in evidence.

Witness reads letter as follows:

"JAN'Y 13TH, 1890.

"Messrs. Schoolfield, Hanauer & Company, Memphis, Tennessee.

"GENTLEMEN: We were very much surprised to learn today that Henry Warten, of Athens, Ala., had sold out to you, especially as you had written to us December 27th, asking that we sign, in conjunction with you and one other creditor, an extension agreement for said Warten. We did so at your suggestion, taking his papers as follows: Jan. 15, $1,000; Feb. 1, $500; Feb. 15, $500; Mar. 1, $500; Mar. 15, $500; Nov. 1, $1,142.52; Nov. 15, $1,142.50; Dec. 1, $1,142.50.

"We cannot now understand why he should sell out, after having been granted the extension. We presume that we have been preferred in this matter, and would kindly ask you to let us hear from you by return mail, with full particulars.

"Yours very truly, BAMBERGER, BLOOM & CO."

Q. What is the date of that?

A. January 13th, 1890.

Q. Was that letter ever returned to your house?

A. Never was.

Q. In what sort of envelope was it sent?

A. Our business envelope. It had our name on the back
530 and return in either "6" or "10 days."

Q. And the place where it was to be returned?

A. Yes, sir.

Cross-examination by DAVID POSTON, Esq.:

Q. Of course you mailed that letter yourself?
A. No, sir; I did not say that.
Q. You copied that on your book yourself?
A. No, sir.
Q. All you did was to give it to the boy to take to the office?
A. All I did was to sign it.
Q. And you don't know whether it was taken to the office or not?
A. No, sir.

Mr. MCCLELLAN: "Claimants move that the letter"——
Judge BRUCE: "Your motion is overruled before you make it."
Claimants except to this ruling of the court.

Mr. HUMES: What is the course of business in reference to letters written by your firm?
A. The head of the house don't carry the letters to the post office. We have a young man employed for that.
Mr. POSTON: "Look at that letter book and show another letter signed by you."
A. That is the only one of that date that I signed.
Q. I wish you would look on that day and see how many you signed.
A. I did not sign any others that day.
Q. Who wrote that letter on the 13th to John Mason?
531 A. I don't know; I did not sign it.
Q. Now, here is a letter to a man named Fulton. Who wrote that?
A. Our stenographer.
Q. Then the only letter you see there that you signed that day is that one letter?
A. Yes, sir.
Q. Who signed those letters there generally?
A. Important letters are usually brought in to Mr. Goldsmith or some of the firm.
Q. Who is the man that usually signs those letters?
A. Our stenographer.
Q. Who is that?
A. Mr. Neffler, and we have a young lady, too.
Q. They are not here?
A. No, sir.
Q. You did not take their depositions?
A. No, sir.
Mr. HUMES: "You supposed the original letter would be here?"
A. I did.
Mr. MCCLELLAN: "Then that letter you signed on the 13th, you had a full knowledge of its contents?"
A. I never sign anything until I look over it.

H. G. MILLER recalled.

Direct examination by DAVID POSTON, Esq.:

Q. You are one of the active members of the firm of Schoolfield, Hanauer & Company, are you not?

A. Yes, sir.

Q. Where were you on the 13th or 14th of last January?

532 A. I was in Athens, Alabama.

Q. Did you ever see or hear of this letter introduced in evidence from Bamberger, Bloom & Company to Schoolfield, Hanauer & Co. until yesterday?

A. I never did, sir.

Q. Did you or not, when you got home from Athens, hear of the telegram they sent your firm?

A. I did, sir.

Q. Was nothing said to you by any of the parties at home about that letter?

A. Mr. Schoolfield never said anything about it, and me and him runs the business.

Q. Have you telegraphed to him about that letter?

A. Yes, sir.

Q. From your business there, would you or not have heard of that letter if it had been received?

A. I think I would; Mr. Schoolfield would have told me, because he knew I was managing this case.

Claimants offer in evidence, in connection with the testimony of this witness, the following telegrams:

"OCT. 30, 1890.

"To the Schoolfield-Hanauer Company, Memphis, Tenn.:

"Send all letters received by us from B., B. & Co. first mail.

"H. G. MILLER."

2.

"MEMPHIS, TENN., *Oct.* 30, 1890.

"To H. G. Miller, care Huntsville hotel:

533 "No letter received from Bamberger. We mail you telegram received from them & copy of reply, which we thought you had.

"W. W. SCHOOLFIELD."

This was all the evidence.

534 *Charge of the Court.*

To that part of the general charge of the court which is as follows, to wit:

That the jury need not consider the question of the general assignment made on the day of the transfer, because the court has reached the conclusion that, under the statute of Alabama on that subject

and the decisions of the supreme court of Alabama in exposition of the statute, *that* the general assignment of the notes and accounts of Henry Warten, though made on the same day as the transfer in question, does not affect the validity of the transfer of Henry Warten to Schoolfield, Hanauer & Company, if otherwise, as heretofore stated, the transfer is not objectionable. I think I may say this—that the authority relied on here by the plaintiffs to establish their proposition that because this thing was done on the same day or because it was done by Henry Warten in contemplation of insolvency, that therefore the court will consider this whole transaction—that is to say, the transfer of the property by Henry Warten to Schoolfield, Hanauer & Company and the general assignment (or what is called the general assignment) made on the same day—as one and the same transaction, and when that is the case it would be the same as a preference; and I say preference now, but I should rather say a
535 sale, because I think there is a difference between a payment and a preference and a sale and a preference, and that distinction is found in the decisions; but I think it is not, perhaps, found in the decisions to which my attention has been called, and I think the Federal authorities treat the payment of a debt the same as if it were a preference by a deed of trust or somethin- of that kind, and I am not disposed to question the answer that the counsel made to me when I called attention to that point; but the ground upon which I rest my view is this—that, although that may be so under those various statutes of Colorado and Illinois and perhaps others, and without stopping now to consider whether these statutes are the same as the statutes of this State, it is a pretty clear proposition to my mind that the supreme court of Alabama, in exposition of this statute, not merely in one case—the first case to which Captain Humes called attention does seem to bear him out, and another case, to which Mr. Shelby called my attention. If these decisions stood alone as to the exposition of the law of Alabama, I would hold with them; but the later decisions upon this subject do not sustain that view. There is plenty of cases here—I can't call the case right now. There is the case of——

Mr. COOPER: "Otis *vs.* McGuire."

Judge BRUCE: "Yes; that is the case; and then, here, there is a case of Street and there — a number of them; and I think the supreme court of Alabama has gone further upon this subject,
536 perhaps, than some of the courts of other States in sustaining a transfer of property in extinguishment of a debt, though it may have been made on the same day. Such a transfer, when so made in payment of the debt by absolute conveyance, and not a mere deed of trust—where it is not a mere security, but an absolute sale, such a transaction is maintained; and therefore I say to the jury, you need not consider that question."

the plaintiffs duly excepted.

To that part of the general charge of the court which is as follows, to wit:

"If, however, on the contrary, the jury shall believe, and it is so

claimed, that in this race of diligence between the creditors an advantage was sought by Bamberger, Bloom & Company in this, that they gave an extension (which they knew was not the extension contemplated by the letter of December 27th of last year) in the hope or with the view that Schoolfield, Hanauer & Company would give an extension for a year, and that by taking short paper they would thereby get an advantage over Schoolfield, Hanauer & Company, then if that is the true solution of the transaction Bamberger, Bloom & Company have no right to complain."

the plaintiffs duly excepted.

It is said that a proposition must be accepted, and that is true, ordinarily, at least; when a proposition is made in writing it
537 is ordinarily accepted in writing; but still, in a case of this kind, which is not strictly a case of contract entered into between parties as the purchase and sale of property, such as a proposition to sell at a given price and an acceptance of the proposition or a rejection of it, still it is true that persons may accept a proposition otherwise than in writing by complying with it. For instance, if a party were to offer the *the* purchase of property to another party, that other party might comply with the proposition by accepting it, and that would be an acceptance of the proposition, although there may not be notice through the mail or by a messenger or by any other notice other than delivery of the property in accordance with the proposition.

Now, gentlemen, there are a large number of prayers for instructions, some of which I am prepared to give and some not, and these prayers for special instructions cover the whole case. In order that the jury may understand, I have covered the whole case as I understood it to be, and these are somewhat in addition, which you are to take in connection with the general charge.

I give the following charges for the claimants:

1.

Before the plaintiffs can recover in this case the jury must
538 be satisfied from all the evidence that Schoolfield, Hanauer & Company committed a fraud on the creditors of Warten, and unless such fraud is shown the verdict should be for the claimants.

Judge BRUCE: "I think I ought to say in reference to that that the fraud complained of here is that there was in this transfer—this conveyance of property—a fraud, in that it has in it some secret benefit reserved to Warten. I give it with that understanding."

2.

I charge you that if you find from the evidence that on or about the 13th day of January, 1890, Henry Warten, the debtor, then insolvent or in failing circumstances, made an absolute sale of his property to Schoolfield, Hanauer & Company in payment of an antecedent debt by way of preference over other creditors, their debt being honestly due and the price or consideration received

being fair and adequate, and no interest was reserved by him, his mere fraudulent intent does not vitiate the conveyance, because the act itself is legal, and fraud without damage gives no right of action. These concurrent facts absolutely rebut all inferences that might be drawn from attendant badges of fraud, if there are any, and impart validity to the conveyance as an allowable preference of a particular creditor.

539 3.

If you find from the evidence that the claimants bought the property in controversy of said Warten, on or about the 13th day of January, for a full and adequate consideration and at a price which was the fair value of the property, then I charge you that the burden of proof is in the plaintiff-, Bamberger, Bloom & Co., to show its fraudulent character, or that a benefit was reserved for said Warten.

4.

A debtor in failing circumstances or an insolvent debtor has the right to give preferences in the payment of his debts, and if you find from the evidence in this cause that Henry Warten sold the stock of goods in controversy to Schoolfield, Hanauer & Co. in payment of an honest antecedent debt, due from him to them, at a fair and reasonable price, and did not reserve any benefit or interest therein, the verdict of the jury should be for the claimants, Schoolfield, Hanauer & Co.

5.

If the jury find from the evidence in this cause that Henry Warten sold the stock of goods in controversy to Schoolfield, Hanauer & Co. in payment of an honest debt, due from him to them, at a fair and reasonable price, and did not reserve any interest therein,
540 the verdict should be for the claimants, Schoolfield, Hanauer & Co., although the known effect of such sale was that the remaining creditors would lose their debts.

6.

Every debtor has a right to pay his creditor and every creditor has the right to receive payment in money or in go-ds from his debtors; and if the jury find from the evidence that Warten paid Schoolfield, Hanauer & Co. an honest, existing debt by a sale to them of the goods in controversy at a fair and reasonable price, and that Warten retained no interest or benefit therein, the plaintiffs cannot recover, and the verdict of the jury should be for the claimants, Schoolfield, Hanauer & Co.

6½.

Fraud is never presumed, but must be proved; and if the jury find from the evidence that the claimants, Schoolfield, Hanauer & Co., purch-ed the stock of goods in controversy from Henry Warten

in payment of an honest antecedent debt, due to them from him, at a fair an- reasonable price, and Warten reserved no benefit or interest, the verdict of the jury should be for the claiman-s, Schoolfield, Hanauer & Co., notwithstanding Warten might have had a fraudulent intent. In such cases the fraudulent intent is not material.

541 7.

If the jury believe from the evidence that Henry Warten was honestly indebted to Schoolfield, Hanauer & Co., and that he sold to them the stock of goods involved in this cause at a fair and reasonable price, in payment of a valid debt, the sale is valid, and the title of Schoolfield, Hanauer & Co. is good and legal and must defeat the action in this case unless said Warten reserved a benefit or interest in said sale. The burden of the proof is upon Bamberger, Bloom & Co. to show to the satisfaction of the jury that such interest or benefit was reserved by Warten, and unless the jury is satisfied that an interest or benefit was received by Warten the verdict must be for Schoolfield, Hanauer & Co.

8.

If the jury find from the evidence in this cause, under the instructions given by the court, that the sale by Henry Warten to Schoolfield, Hanauer & Co. is valid, then Schoolfield, Hanauer & Co. had the legal right to give the stock of goods to Mrs. Warten or sell the same to her on such terms as they desired.

10.

I further charge you that if the proof shows that the sale to Schoolfield, Hanauer & Co. by Henry Warten was *bona fide* and for
542 full price, without benefits reserved to said Warten, and that such sale was made before the general assignment was executed, that such sale was good and was not effected by the general assignment subsequently made.

12.

The court does not charge the jury that Henry Warten had any fraudulent intent in making the sale to Schoolfield, Hanauer & Co., but still, if such fraudulent intent did in fact exist, it is wholly immaterial if said sale was in payment of an honest, antecedent debt, at a fair and reasonable price, and no benefit or interest reserved for said Warten.

13.

If the jury find from the evidence, under the instructions given by the court, that Schoolfield, Hanauer & Co. made a valid purchase of the stock of goods in controversy from Henry Warten, then Schoolfield, Hanauer & Co. had a legal right to employ Warten for their benefit to assist in winding up the business and turning the goods into money as promptly and economically as possible.

14.

If the jury find from the evidence that prior to the 13th day of January, 1890, Henry Warten had been engaged for several years in an established and extensive business at Athens, Ala., and
543 *and* that he sold his stock of goods to Schoolfield, Hanauer & Co. in a valid way, it is but reasonable that Warten might be employed by Schoolfield, Hanauer & Co. as a clerk to assist in the winding up of the business for the benefit of Schoolfield, Hanauer & Co. Such circumstance is not of itself fraudulent.

15.

The court charges the jury in this case that the inquiry should be directed to the *bona fides* of the debt and the sufficiency of the consideration and a reservation of a benefit to the debtor. If the transaction is not assailable on some one of these grounds, fraud otherwise has no room for operation.

To the giving of each of the said charges requested by the claimants the plaintiffs duly excepted. Said charges are numbered respectively 1, 2, 3, 4, 5, 6, 6½, 7, 8, 10, 12, 13, 14, & 15.

Judge BRUCE: "Now, gentlemen, you will take the case, and if you find for the plaintiffs, you say: 'We, the jury, find for the plaintiffs and assess the value of the property at ——.'

"If you find for the claimants, you say: 'We, the jury, find the issue in favor of the claimants.'"

The court refused to give the following written charges re-
544 quested by the plaintiffs:

1.

A debtor, although insolvent, in this State has the right to prefer one creditor to another and to convey to him property in payment of a debt; but if at the time he makes such conveyance he contemplates making a general assignment and does, on the same day, make such assignment, such preference would be contrary to the spirit of the Alabama statute in reference to assignments and void. So, if the jury find from the evidence that before the 13th day of January, 1890, Warten contemplated making a general assignment and on that day he executed a transfer of a large portion of his property, including the property levied on and in controversy in this suit, to the claimants and on the same day made a general assignment; and if the jury find further that Warten's intention to make such assignment was known to Miller, of the firm of Schoolfield, Hanauer & Company, or was known to Mr. McClellan, and that he was acting as attorney for them in preparing the transfer to them, then the preference created by the transfer to the claimants would be void and the verdict should be for the plaintiffs.

2.

If the jury find that the written transfer of the property
545 involved in this suit to the claimants and the general assignment to Mr. McGavock, as assignee, were part of one plan of Warten to dispose of all his property with the exception of his exemptions, then the said transfer to the claimants would be contrary to the policy of the Alabama statutes on the subject of general assignments, and their verdict should be for the plaintiffs.

3.

If the jury find from the evidence that Warten, being insolvent, determined to quit business, first disposing of all of his property for the benefit of his creditors, and that he consulted and employed an attorney to prepare the general assignment, and that among his creditors were Schoolfield, Hanauer & Company, and that the said Schoolfield, Hanauer & Company employed the same attorney to represent them in securing their debt against said Warten, and if Warten executed a transfer of a large part of his property to Schoolfield, Hanauer & Company in payment of his indebtedness to them, and executed a general assignment of his property to secure his other creditors, and if both papers were written by the same attorney, and to carry out the purpose of Warten in making a disposition of his entire estate, then the transfer to Schoolfield, Hanauer & Company would be violative of the statute of Alabama upon the
546 subject of general assignments, and a preference made by such transfer would be void, and the verdict of the jury should be for the plaintiffs.

4.

As between creditors of a common debtor, the law requires them to act in good faith. Any advantage or preference which one creditor obtains over another by deceit or artifice or by producing false impressions is in law a fraud. If the jury find from the evidence that the Schoolfield-Hanauer Company, by its president, wrote to Bamberger, Bloom & Company a letter dated Dec. 27th, 1889, and delivered it to Henry Warten, to be carried to plaintiffs, and that plaintiffs when they received said letter had a past-due note against said Warten for $— and a past-due account against him for $—, and that the said Bamberger, Bloom & Company were influenced by *by* said letter to extend said debt by taking the acceptances therefor which were offered in evidence in this case, and such extension was accepted by said Warten, and that knowledge of said acceptance is shown to have been had by Miller, of the firm of Schoolfield, Hanauer & Company, then it would be acting in bad faith for Schoolfield, Hanauer & Company to procure by any means a transfer of Warten's property in payment of their debt to the injury of Bamberger, Bloom & Company, and if the transfer offered in
547 evidence by them was obtained by such means it is void as

against the plaintiffs in this case, and the verdict of the jury should be for the plaintiffs.

(S'g'd) HUMES, WALKER & SHEFFEY,
" D. D. SHELBY & W. T. SANDERS,
Attorneys for Pl'ffs.

5.

If you believe that the acceptances of Henry Warten dated December 30th, 1889, here adduced, given by said Henry Warten to Bamberger, Bloom & Company in settlement of a past-due debt, was taken by Bamberger, Bloom & Company by reason of a letter written by Schoolfield, Hanauer & Company on December 27th, 1889, to Bamberger, Bloom & Company, then Schoolfield, Hanauer & Company had no right to secure the preference here defended, and your verdict should be for the plaintiffs.

(S'g'd) HUMES, WALKER & SHEFFEY,
" D. D. SHELBY & W. T. SANDERS,
Att'ys for Pl'ffs.

8.

If the jury believe the evidence in this case, their verdict must be for the plaintiffs.

9.

If any part of the debt claimed by Schoolfield, Hanauer & Company against Warten as the consideration of the transfer of the goods to them is simulated or pretended, that fact would
548 vitiate the whole transfer. If the jury find from the evidence that part of the consideration is composed of the note of Warten for $2,500, which was due and payable to the Schoolfield-Hanauer Company, a corporation under the laws of Tennessee, and that said note was taken from the account of said corporation and placed upon the account of the claimants for the purpose of increasing the account of Schoolfield, Hanauer & Company, that account to the extent of said $2,500 would be simulated, and this would vitiate the transfer, and if the jury so find, their verdict should be for the plaintiffs.

10.

If part of the consideration of the transfer from Warten to the claimants is a note for $2,500, payable to the Schoolfield-Hanauer Company and owned by them, and if said note was transferred to the account of Schoolfield, Hanauer & Company, and if said transfer was made for the purpose of increasing the firm's debt against Warten so as to make it equal in amount of the goods and property transferred by Warten to the claimants, the consideration for such transfer to the extent of said note for $2,500 would be simulated, and this would vitiate the transfer, and if the jury so find the facts, their verdict must be for the plaintiffs.

549 12.

If the jury find from the evidence that the defendant, Henry Warten, being insolvent and contemplating going out of business and making a general assignment of all his property except the exemptions allowed by law, and that he, on the same day and shortly previous to the execution of such general assignment, made the transfer in evidence in this case to the claimants, Schoolfield, Hanauer & Company, for the purpose of preferring them as creditors, and they or their attorney, Mr. McClellan, at the time of said transfer, had notice or knowledge of the said purpose of said Warten to make said general assignment, then the said assignment and said transfer are part and parcel of the same transaction, and the said transfer, so far as it gives a preference to the payment of the claimants' debt, is fraudulent and void, and the claimants acquired no *property* thereby to the property in dispute, and the verdict of the jury should be for the plaintiffs.

13.

If the jury believe from the evidence that the promissory note for $2,500 made by Henry Warten on June 10th, 1889, payable to the order of Schoolfield, Hanauer & Company, at the office of Schoolfield-Hanauer Company, four months after date, and endorsed, The Schoolfield-Hanauer Company, per W. W. Schoolfield, treas-
550 urer, was taken and endorsed by said corporation, and it let said Warten have the amount thereof, less discount, being $—, by crediting his account with said corporation for $—, as shown by said statement of said accounts in evidence in this case, then said draft became the property of said corporation, and it was an indebtedness due by said Warten to it; and if the jury further believe from the evidence that said indebtedness was transferred from the account of said Warten with said corporation to the account of said Warten with said firm on or about the 11th day of January, 1890, for the purpose of evading the law of the State of Alabama, which prohibits foreign corporations from doing business in the State of Alabama without known place of business and authorized agent therein, the jury would be authorized to find that said indebtedness was the property of and due to said corporation, and not said firm, when said alleged transfer of the stock of goods in dispute in this suit to said firm by said Warten was made; and should they so find, in that event their verdict should be for the plaintiffs.

The court refused to give each of said foregoing charges requested by the plaintiffs, and to this action of the court the plaintiffs duly excepted, excepting to the refusal to give each separate charge. Said charges are numbered respectively 1, 2, 3, 4, 5, 8, 9, 10, 12, & 13.

551 *Verdict of Jury.*

"We, the jury, find the issue in favor of the claimants." And the plaintiffs tender this their bill of exceptions, which is signed and sealed in open court this November 1st, 1890.

Prayers Nos. 4 and 5 were given and not refused, as stated; otherwise the bill is in substance correct.

(S'g'd) JOHN BRUCE, *Judge.*

552 *Assignment of Errors.*

In the Circuit Court of the United States for the Northern Division and District of Alabama.

BAMBERGER, BLOOM & COMPANY, Plaintiff,
vs.
HENRY WARTEN, Defendant—SCHOOLFIELD, HANAUER & COMPANY, Claimants.

Comes the plaintiff and assigns the following errors upon the record committed by the court to their injury, viz:

1. The plaintiff asked Henry Warten, defendant, the following question: "When you directed him to prepare the paper on Saturday did you intend at that time to reserve all of this property for Schoolfield, Hanauer & Company?" The claimants objected to said question as follows: "Claimants object to the acts, conduct, and declarations of this grantor made out of the presence of the grantee, either before or after the transaction, on the ground that it is incompetent evidence against the grantee." The court erred in not permitting said witness to answer said question. Record, page 270.

2. The court erred in overruling plaintiff's objection to the following question propounded by claimants to the witness,
553 Henry Warten, viz: "While you were a clerk in the house mentioned did you do any other business in any other trade?" Record, page 216.

3. The court erred in not permitting the witness, Henry Warten, to answer the following question propounded to him by plaintiff and objected to by claimants: "I will get you to state what your personal account was for the year 1888." Record, page 317.

4. The court erred in allowing the witness, Henry Warten, to testify, against the objection of plaintiff, as follows: "Yes, sir; he said I can get you up at least $2,000 this week and about $1,500 next week." Record, page 337.

5. The court erred in allowing the following question to be asked the witness, H. G. Miller, and allowing the following answer thereto: "In your dealings with him through a number of years, was he a close business man?" Answer. "He was as close as I ever had business with. If there was any entry of overcharge he would write back about it. I used to think he fussed to- much about it." Record, page 357.

6. The court erred in allowing the witness, H. G. Miller, to testify as follows, against the objection of plaintiffs, viz: "Mr. Warten came to Memphis and came to see us—nearly all his transactions were with me. He came and told me he wanted an extension until De-

cember 31st, and that he wanted me to give him an extension." Record, page 364.

7. The court erred in permitting the witness, H. G. Miller, to testify to conversations between himself, Warten, and Schoolfield, as stated in 1st, 2nd, and 3rd objections to said evidence by plaintiff. Record, page 364.

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8. The court erred in allowing the witness, W. H. Sykes, to testify as follows to the following questions against the objections of plaintiffs:

"Q. Have you ever bought or sold any old stocks of general merchandise in a lump in that county? A. Yes, sir."

"Q. What would be a reasonable discount below cost of a stock of goods, wares, and merchandise in the town of Athens that had been running eight years, paid from time to time, according to the circumstances of the business? A. I sold my business out there; mine consisted of groceries, hardware, and staple dry goods. I sold at 15 per cent. off of the face of the invoice. I sold the entire stock."

"Q. Would or not there be a much greater discount off of a stock of dry goods that had been running eight years? A. I don't know; it would be owing to circumstances." Record, pp. 396, 397.

9. The court erred in allowing said witness, W. H. Sykes, to testify, against the objection of plaintiff, as follows, in answer to the following questions, viz: "Would there or not be a much greater discount off of an old stock of goods in Athens that had been running eight years, including dry goods, notions, and fancy things, sold in bulk, with very few new goods in there?"

Answer. "It might be worth 50 cents on the dollar and might be worth 75; it is owing to how old they are and what they are. I don't know anything about the stock of goods you speak of." Record, pp. 397, 398.

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10. The court erred in sustaining the objection of claimants to the following question by plaintiffs to witness L. L. Weir, viz: "Then, the conversation you had with him at that time about furnishing you for the year was on the street?" Record, p. 474.

11. The court erred in sustaining the objection of the claimants to the following question of plaintiffs to the witness, A. M. Dunham, viz: "What did you do with those mules and horses?" Claimants object to this question on the ground that it is immaterial and seeks to bind the claimants by the conduct of third persons. Objection sustained by the court. Plaintiffs except to the ruling of the court. Plaintiffs propose to show in that connection that between January 1st and 13th the witness sold to Warten the mules and horses he had given Warten the mortgage on, and that they were part of the mules and horses that Schoolfield, Hanauer & Company got, and that after he let Warten have them he received a notice from the Louisville Banking Company that the note and mortgage had been transferred to them, and that the claim against Donham was transferred to the assignee. Record, p. 479.

12. The court erred in allowing the witness, Henry Warten, to testify, against plaintiffs' objection, as follows: "Yes, sir; and Mr. Williams bought about $20 that day and remarked: 'I will pay

cash as soon as I get the money from my son-in-law,' and a
556 few days after he came in and said his son-in-law did not have the money and asked me to get Mr. Miller to run him, and I saw Mr. Miller and he run him." Record, page 504.

13. The court erred in that part of his general charge to the jury excepted to by the plaintiff, which portions excepted to are as follows: "That the jury need not consider the question of the general assignment made on the day of the transfer because the court has reached the conclusion that under the statute of Alabama on that subject and the decisions of the supreme court of Alabama in exposition of the statute, that the general assignment of the notes and accounts of Henry Warten, though made on the same day as the transfer in question, does not affect the validity of the transfer of Henry Warten to Schoolfield, Hanauer & Company; if otherwise, as heretofore stated, the transfer is not objectionable, I think I may say this: that the authority relied on here by the plaintiffs to establish their proposition that because this thing was done on the same day or because it was done by Henry Warten in contemplation of insolvency, that therefore the court will consider this whole transaction—that is to say, the transfer of the property by Henry Warten to Schoolfield, Hanauer & Company and the general assignment (or what is called the general assignment) made on the same day—as one and the same transaction, and when that is the case it would be the same as a preference, and I say preference
557 now, but I should rather say a sale, because I think there is a difference between a payment and a preference and a sale and a preference, and that distinction is found in the decisions, but I think it is not, perhaps, found in the decisions to which my attention has been called, and I think the Federal authorities treat the payment of a debt the same as if it were a preference by a deed of trust or something of that kind, and I am not disposed to question the answer that the counsel made to me when I called attention to that point, but the ground upon which I rest my view is this: that, although that may be so under those various statutes of Colorado and Illinois and perhaps others, and without stopping now to consider whether these statutes are the same as the statute of this State, it is a pretty clear proposition to my mind that the supreme court of Alabama in exposition of this statute—not merely in one case, the first case, to which Captain Humes called attention—does seem to bear him out, and another case to which Mr. Shelby called my attention. If these decisions stood alone as the exposition of the law of Alabama, I would hold with them; but the later decisions upon this subject do not sustain that view. There *is* plenty of cases here. I can't call the right case now. There is a case of Otis *vs.* McGuire, and then there is a case of Street, and there are a number of them, and I think the supreme court of Alabama has gone further upon this subject, perhaps, than some of the courts of
558 other States in sustaining a transfer of property in extinguishment of a debt, though it may have been made *in* the same day. Such a transfer, when so made in payment of the debt by absolute conveyance, and not a mere deed of trust, where it is

not a mere security, but an absolute sale, such a transaction is sustained, and therefore I say to the jury, you need not consider that question."

To that part of the general charge which is as follows, to wit: "If, however, the jury shall believe, and it is so claimed, that in this race of dil*l*igence between the creditors an advantage was sought by Bamberger, Bloom & Company in this, that they gave an extension (which they knew was not the extension contemplated by the letter of December 27th of last year) in the hope or with the view that Schoolfield, Hanauer — would give an extension for a year, and that by taking short paper they would thereby get an advantage over Schoolfield, Hanauer & Company, then, if that be a true solution of the transaction, Bamberger, Bloom & Company have no right to complain." Record, pages 534–536.

14. The court erred in giving to the jury written charge No. 1 asked by claimants, which is as follows, viz.: "Before the plaintiff can recover in this case the jury must be satisfied from all the evidence that Schoolfield, Hanauer & Company committed a fraud on the creditors of Warten, and unless such fraud is shown the verdict should be for the claimants." Record, page 537.

15. The court erred in his remarks to the jury in giving said charge No. 1, asked by claimant, viz: "I think I ought to say, in reference to that, that the fraud complained of here is that
559 there was in this transfer—this conveyance of the property—a fraud, in that it has in it some secret benefit reserved to Warten. I give it with that understanding." Record, page 538.

16. The court erred in giving to the jury charge No. 2 asked by the claimant, viz: "I charge you that if you find from the evidence that on or about the 13th day of January, 1890, Henry Warten, the debtor, then insolvent or in failing circumstances, made an absolute sale of his property to Schoolfield, Hanauer & Co. in payment of an antecedent debt by way of preference over other creditors, their debt being honestly due and the price or consideration received being fair and adequate and no interest was reserved by him, his mere fraudulent intent does not vitiate the conveyance, because the act itself is legal and fraud without damage gives no right of action.

These concurrent facts absolutely rebut all inferences that might be drawn from attendant badges of fraud, if any there are, and impart validity of the conveyance as an allowable preference of a particular creditor. Record, p. 538.

17. The court erred in giving to the jury charge No. 3 asked by claimants, namely: "If you find from the evidence that the claimants bought the property in controversy of said Warten, on or about the 13th day of January, for a full and adequate consideration and at a price which was the fair value of the property, then I charge you that the burden of the proof is on the plaintiff, Bam-
560 berger, Bloom & Co., to show its fraudulent character or that a benefit was reserved for said Warten." Record, p. 539.

18. The court erred in giving to the jury written charge No. 4, asked by claimant, viz: A debtor in failing circumstances or an

insolvent debtor has the right to give preference in the payment of his debts, and if you find from the evidence in this cause that Henry Warten sold the stock of goods to Schoolfield, Hanauer & Co. in payment of an honest antecedent debt due from him to them, at a fair and reasonable price, and did not reserve any benefit or interest therein, the verdict of the jury should be for Schoolfield, Hanauer & Company. Record, page 539.

19. The court erred in giving to the jury written charge No. 5 asked by the claimant, viz: If the jury find from the evidence in this cause that Henry Warten sold the stock of goods in controversy to Schoolfield, Hanauer & Co. in payment of an honest debt due from him to them, at a fair and reasonable price, and did not reserve any interest or benefit therein, the verdict should be for the claimants, Schoolfield, Hanauer & Co., although the known effect of such sale was that the remaining creditors would lose their debts. Record, page 539.

20. The court erred in giving to the jury charge No. 6 asked by the claimant, viz: "Every debtor has the right to pay his creditors and every creditor has the right to receive payment in money or in goods from his debtor, and if the jury find from the evi-
561 dence that Warten paid Schoolfield, Hanauer & Co. an honest existing debt by a sale to them of the goods in controversy at a fair and reasonable price, and that Warten retained no interest or benefit therein, the plaintiffs cannot recover, and the verdict of the jury should be for the claimants, Schoolfield, Hanauer & Co." Record, p. 540.

21. The court erred in giving to the jury written charge No. 6½ asked by claimant, viz: "Fraud is never presumed, but must be proved, and if the jury find from the evidence that the claimants, Schoolfield, Hanauer & Co., purchased the stock of goods in controversy from Henry Warten in payment of an honest antecedent debt due to them from him, at a fair and reasonable price, and Warten reserved no benefit or interest, the verdict of the jury should be for the claimants, Schoolfield, Hanauer & Co., notwithstanding Warten might have had a fraudulent intent. In such cases the fraudulent intent is not material." Record, page 540.

22. The court erred in giving to the jury written charge No. 7 asked by the claimant, viz: "If the jury believe from the evidence that Henry Warten was honestly indebted to Schoolfield, Hanauer & Co., and that he sold to them the stock of goods involved in this cause, at a fair and reasonable price, in payment of a valid debt, the sale is valid and the title of Schoolfield, Hanauer & Co. is good and legal and must defeat the action in this case unless said
562 Warten reserved a benefit or interest in said sale. The burden of proof is upon Bamberger, Bloom & Co. to show to the satisfaction of the jury that such interest or benefit was reserved by Warten and unless the jury is satisfied that an interest or benefit was *received* by Warten, the verdict must be for Schoolfield, Hanauer & Co." Record, page 541.

23. The court erred in giving written charge No. 8 asked by the claimant, viz: "If the jury find from the evidence in this cause,

under the instructions given by the court, that the sale by Henry Warten to Schoolfield, Hanauer & Co. is valid, then Schoolfield, Hanauer & Co. had the legal right to give the stock of goods to Mrs. Warten or sell the same to her on such terms as they deserved." Record, page 541.

24. The court erred in giving to the jury written charge No. 10 asked by the claimant, viz: "I further charge you that if the proof show that the sale to Schoolfield, Hanauer & Co. by Henry Warten was *bona fide* and for a full price, without benefits reserved to said Warten, and that such sale was made before the general assignment was executed, that such sale was good and not affected by the general assignment subsequently made." Record, page 541.

25. The court erred in giving to the jury written charge No. 12 asked by the claimant, viz: "The court does not charge the jury Henry Warten had any fraudulent intent in making the sale to Schoolfield, Hanauer & Co.; but still, if such fraudulent in-
563 tent did exist—in fact exist—it is wholly immaterial, if said sale was in payment of an honest antecedent debt at a fair and reasonable price and no benefit or interest reserved for said Warten." Record, p. 542.

26. The court erred in giving the jury written charge No. 13 asked by the claimant, viz: "If the jury find from the evidence, under the instructions given by the court, that Schoolfield, Hanauer & Co. made a valid purchase of the stock of goods in controversy from Henry Warten, then Schoolfield, Hanauer & Co. had a legal right to employ Warten for their benefit to assist in winding up the business and turning the goods into money as promptly and economically as possible." Record, p. 542.

27. The court erred in giving written charge No. 14 asked by the claimant, viz: "If the jury find from the evidence that prior to the 13th day of January, 1890. Henry Warten had been engaged for several years in an established and extensive business at Athens, Ala., and that he sold his stock of goods to Schoolfield, Hanauer & Co. in a valid way, it is but reasonable that Warten might be employed by Schoolfield, Hanauer & Co. as a clerk to assist in the winding up of the business for the benefit of Schoolfield, Hanauer & Co. Such circumstance is not of itself fraudulent." Record, page 542.

28. The court erred in giving to the jury written charge No. 15 asked by the claimant, viz: "The court charges the jury in this case that the inquiry should be directed to the *bona fides* of the
564 debt and the sufficiency of the consideration and a reservation of a benefit to the debtor. If the transaction is not assailable on some one of these grounds, fraud otherwise has no room for operation." Record, page 543.

29. The court erred in refusing to give written charge No. 1 asked by the plaintiff, viz: "A debtor, although insolvent, in this State has the right to prefer one creditor to another, and to convey to him property in payment of a debt; but if at the time he makes such conveyance he contemplated making a general assignment and does on the same day make such an assignment, such preference would

be contrary to the spirit of the Alabama statute in reference to assignments and void; so if the jury find from the evidence that before the 13th day of January, 1890, Warten contemplated making a general assignment, and that on that day he executed a transfer of a large portion of his property, including the property levied on and in controversy in this suit, to the claimants, and on the same day made a general assignment, and if the jury find further that Warten's intention to make such assignment was known to Miller, of the firm of Schoolfield, Hanauer & Company, or was known to Mr. McClellan, and that he was acting as attorney for them in preparing the transfer to them, then the preference created by the transfer to the claimants *should* be void, and the verdict should be for the plaintiffs." Record, page 544.

565 30. The court erred in refusing to give the jury written charge No. 2 asked by the plaintiff, viz: "If the jury find that the written transfer of the property involved in this suit to the claimants and the general assignment to McGavock as assignee were part of one plan of Warten to dispose of all of his property with the exception of his exemptions, then the said transfer to the claimants would be contrary to the policy of the Alabama statute on the subject of general assignments, and their verdict should be for the plaintiffs." Record, page 544.

31. The court erred in refusing to give the jury written charge asked by the plaintiff as follows, to wit: "If the jury find from the evidence that Warten, being insolvent, determined to quit business, first disposing of all of his property for the benefit of his creditors, and that he consulted and employed an attorney to prepare the general assignment, and that among his creditors were Schoolfield, Hanauer & Company, and that Schoolfield, Hanauer & Company employed the same attorney to represent them in securing their debt against said Warten, and if Warten executed a transfer of a large part of his property to Schoolfield, Hanauer & Company in payment of his indebtedness to them and executed a general assignment of his property to secure his other creditors, and if both papers were written by the same attorney and to carry out the purpose of Warten in making a disposition of his entire estate, then the

566 transfer to Schoolfield, Hanauer & Company would be violative of the statute of Alabama upon the subject of general assignments, and a preference made by such transfer would be void, and the verdict of the jury should be for the plaintiffs." Record, page 545.

32. The court erred in refusing to give to the jury, at plaintiffs' request, the following charge, viz: "If the jury believe the evidence in this case, their verdict must be for the plaintiffs." Record, page 547.

33. The court erred in refusing to give to the jury, at plaintiffs' request, the following charge, namely: "If any part of the debt claimed by Schoolfield, Hanauer & Co. against Warten as the consideration of the transfer of the goods to them is simulated or pretended, that fact would vitiate the whole transaction. If the jury find from the evidence that part of the consideration is composed of

the note of Warten for $2,500, which was due and payable to the Schoolfield-Hanauer Company, a corporation under the laws of Tennessee, and that said note was taken from the account of said corporation and placed upon the account of the claimants for the purpose of increasing the account of Schoolfield, Hanauer & Company, that account to the extent of said $2,500 would be simulated, and this would vitiate the transaction, and if the jury so find, their verdict should be for the plaintiffs." Record, p. 547.

567 34. The court erred in refusing to give, at plaintiffs' request, the following charge, namely: "If part of the consideration of the transfer from Warten to the claimants is a note for $2,500, payable to the Schoolfield-Hanauer Company and owned by them, and if the said note was transferred to the account of Schoolfield, Hanauer & Company, and if said transfer was made for the purpose of increasing the firm's debt against Warten, so as to make it equal in amount to the value of the goods and property transferred by Warten to the claimants, the consideration for such transfer to the extent of said note for $2,500 would be simulated, and this would vitiate the transfer, and if the jury so find the facts, their verdict must be for the plaintiff." Record, page 548.

35. The court erred in refusing to give to the jury charge No. 12 asked by the plaintiff, namely: "If the jury find from the evidence that the defendant, Henry Warten, being insolvent and contemplating going out of business and making a general assignment of all of his property except the *exceptions* allowed by law, and that he, on the same day and shortly previous to the execution of such general assignment, made the transfer in evidence in this case to the claimants, Schoolfield, Hanauer & Company, for the purpose of preferring them as creditors, and they or their attorney, Mr. McClellan, at the time of said transfer, had notice or knowledge of the said purpose of said Warten to make said general assignment,

568 then the said assignment and said transfer are part and parcel of the same transaction, and the said transfer, so far as it gives a preference to the payment of the claimants' debt, is fraudulent and void, and the claimants acquired no title thereby to the property in dispute, and the verdict of the jury should be for the plaintiffs." Record, p. 549.

36. The court erred in refusing to give, at plaintiffs' request, charge No. 13, as follows: "If the jury believe from the evidence that the promissory note for $2,500 made by Henry Warten on June 10th, 1889, payable to the order of Schoolfield, Hanauer & Company, at the office of Schoolfield-Hanauer Company, four months after date, and endorsed: 'The Schoolfield-Hanauer Company, p'r W. W. Schoolfield, treasurer,' was taken and endorsed by said corporation, and it let said Warten have the amount thereof, less discount, being $——, by crediting his account with said corporation for $——, as shown by said statements of said accounts in evidence in this case, then said draft became the property of said corporation and it was an indebtedness due by said Warten to it; and if the jury further believe from the evidence that said indebtedness was transferred from the account of said Warten with said corporation to the account of said Warten

with said firm on or about the 11th day of January, 1890, for the purpose of evading the law of the State of Alabama, which prohibits foreign corporations from doing business in the State of Alabama without known place of business and authorized agent
569 therein, the jury would be authorized to find that said indebtedness was the property of and due to said corporation, and not said firm, when said alleged transfer of the stock of goods in dispute in this suit to said firm by said Warten was made; and should they so find, in that event their verdict should be for the plaintiffs." Record, page 549.

Wherefore the plaintiff prays that the judgment in this case be reversed, set aside, and held for naught.

MILTON HUMES AND
D. D. SHELBY,
Attorneys for Appellants.

Endorsed: No. 1476. U. S. circuit court, northern division of the northern district of Alabama. Bamberger, Bloom & Company *vs.* Henry Warten; Schoolfield, Hanauer & Company, claimants. Assignment of errors. Filed in clerk's office Sept. 18th, 1891. N. W. Trimble, clerk.

UNITED STATES OF AMERICA, }
Northern District of Alabama, Northern Division. }

I, N. W. Trimble, clerk of the circuit court of the United States of America in and for said division of said district, do hereby certify that the foregoing is a true, full, and complete transcript and copy of the record and proceedings heretofore had in a cause lately pending in said court between Bamberger, Bloom & Co., plaintiffs, and Henry Warten, defendant; Schoolfield, Hanauer & Company, claimants, as fully as the same does appear of record in my office.

Seal Circuit Court U. S., N. D. of Alabama.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office, in the city of Huntsville, in said district, this 18th day of September, A. D. 1891.

N. W. TRIMBLE,
Clerk of the U. S. Circuit Court.

Endorsed on cover: Case No. 14,854. N. Alabama C. C. U. S. No. 296. Bamberger, Bloom & Company, plaintiffs in error, *vs.* W. W. Schoolfield and H. G. Miller, surviving partners of Schoolfield, Hanauer & Company. Filed September 21, 1891.

Office Supreme Court, U. S.
FILED.
APR 4 1895
JAMES H. McKENNEY,
CLERK.

In The Supreme Court of the United States.

OCTOBER TERM, 1894.

NO. 296.

BAMBERGER, BLOOM & COMPANY,
PLAINTIFFS IN ERROR,

vs

W. W. SCHOOLFIELD AND H. G. MILLER,
(Surviving partners of Schoolfield, Hanauer & Co.,)
DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

Brief and Argument of Counsel for Plaintiffs in Error, by Milton Humes.

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(Surviving partners of Schoolfield, Hanauer & Co.)
DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

BRIEF OF COUNSEL FOR PLAINTIFFS IN ERROR.

STATEMENT OF CASE.

This suit was commenced by attachment in the Circuit Court, January 15, 1890, by Bamberger, Bloom & Company, the Plaintiffs in Error, against Henry Warten on an indebtedness due by him to them in the sum of about $6,500.

The attachment was sued out under and in pursuance of the provisions of the statute law of Alabama upon the ground that Warten had fraudulently disposed of his property. The writ of attachment which issued in the case January 15, 1890, was levied

January 16, 1890, by the United States Marshal on the stock of goods which is the subject-matter of litigation. The endorsement of the levy by the Marshal on the writ of attachment is as follows: "Executed January 16, 1890, at 12:15 p. m., by levying this writ on the stock of goods of every description in the storehouse in Athens, Alabama, recently occupied by Henry Warten and known as his storehouse, and have taken the same into my possession and have given written notice of this levy and seizure to said Henry Warten, this 16th day of January, 1890.

(S'g'd) C. C. AUSTIN,
U. S. Marshal,
By R. C. BETTS,
Deputy.

Record p. 3.

Thereafter on January 21, 1890, a paper purporting to be an affidavit was filed in the cause, made by Henry G. Miller, one of the Defendants in Error, and sworn to before Robert C. Betts, Deputy U. S. Marshal, January 20, 1890, claiming that the stock of goods levied on was the property of Schoolfield, Hanauer & Co. On the same day, January 21, 1890, that this affidavit in behalf of Schoolfield, Hanauer & Company, as claimants, was filed, they also filed a replevy bond for the property. Thereafter an issue was made up between Bamberger, Bloom & Company, as plaintiffs, and Schoolfield, Hanauer & Company, as claimants, to try the right of property to the stock of goods levied upon; and at the October term, 1890, a trial was had, resulting in a verdict and judgment for the claimants. In the trial of the cause numerous exceptions were reserved by the plaintiffs to the rulings of the trial court on matters of evidence and to portions of the general charge of the Court to the jury, and also to special charges asked by plaintiffs and refused, and also to special charges asked by the claimants and given, all of which is shown by the bill of exceptions in the record.

ASSIGNMENTS OF ERROR.

The following are the Assignments of Error relied upon for reversal of the case:

1. The plaintiff asked Henry Warten, defendant, the following question: "When you directed him to prepare the paper on Saturday did you intend at that time to reserve all of this property for Schoolfield, Hanauer & Company?" The claimants objected to said question as follows: "Claimants object to the acts, con-

duct, and declarations of this grantor made out of the presence of the grantee." The Court erred in not permitting said witness to answer said question. Record, marg. p. 270.

2. The Court erred in overruling plaintiff's objection to the following question propounded by claimants to the witness, Henry Warten, viz: "While you were a clerk in the house mentioned did you do any other business in any other trade?" Record, marg. p. 216.

3. The Court erred in not permitting the witness, Henry Warton, to answer the following question propounded to him by plaintiff and objected to by claimaints: "I will get you to state what your personal account was for the year 1888." Record, marg. p. 317.

4. The court erred in allowing the witness, Henry Warten, to testify, against the objection of plaintiffs, as follows: "Yes, sir; he said I can get you up at least $2,000 this week and about $1,500 next week." Record, marg. p. 337.

5. The court erred in allowing the following question to be asked the witness, H. G. Miller, and allowing the following answer thereto: "In your dealings with him through a number of years, was he a close business man?"

A. "He was as close as I ever had business with. If there was an entry of overcharge he would write back about it. I used to think he fussed too much about it." Record, marg. p. 357.

6. The Court erred in allowing the witness, H. G. Miller, to testify as follows, against the objection of plaintiffs, viz: "Mr. Warten came to Memphis and came to see us—nearly all his transactions were with me. He came and told me he wanted an extension until December 31, and that he wanted me to give him an extension." Record, marg. p. 364.

7. The Court erred in permitting the witness, H. G. Miller, to testify to conversation between himself, Warten, and Schoolfield, as stated in first, second, and third objections to said evidence by plaintiff. Record, marg. p. 364.

8. The Court erred in allowing the witness, W. H. Sykes, to testify as follows to the following questions against the objections of plaintiffs:

Q. "Have you ever bought or sold any old stocks of general merchandise in a lump in that county?"

A. "Yes, sir."

Q. "What would be a reasonable discount below cost of a stock of goods, wares, and merchandise in the town of Athens that had been running eight years, paid from time to time, according to the circumstances of the business?"

A. "I sold my business out there; mine consisted of groceries, hardware, and staple dry goods. I sold at 15 per cent off of the face of the invoice. I sold the entire stock."

Q. "Would or not there be a much greater discount off of a stock of dry goods that had been running eight years?"

A. "I don't know; it would be owing to circumstances," Record, marg. pp. 396, 397.

9. The Court erred in allowing said witness, W. H. Sykes, to testify, against the objection of plaintiff, as follows, in answer to the following question, viz: "Would there or not be a much greater discount off of an old stock of goods in Athens that had been running eight years, including dry goods, notions, and fancy things, sold in bulk, with few new goods in there?"

A. "It might be worth 50 cents on the dollar and might be worth 75; it is owing to how old they are and what they are. I don't know anything about the stock of goods you speak of." Record, marg. pp. 397, 398.

10. The Court erred in sustaining the objection of claimants to the following question by plaintiffs to witness, L. L. Weir, viz: "Then, the conversation you had with him at that time about furnishing you for the year was on the street?" Record, marg. p. 474.

11. The Court erred in sustaining the objection of the claimants to the following question by plaintiffs to the witness, A. M. Dunham, viz: "What did you do with those mules and horses?" Claimants object to this question on the ground that it is immaterial and seeks to bind the claimants by the conduct of third persons. Objection sustained by the Court. Plaintiffs except to the ruling of the Court. Plaintiffs propose to show in that connection that between January 1 and 13 the witness sold to Warten the mules and horses he had given Warten the mortgage on, and they were part of the mules and horses that Schoolfield, Hanauer & Company got, and that after he let Warten have them he received a notice from the Louisville Banking Company that the note and mortgage had been transferred to them, and that the claim against Dunham was transferred to the assignee." Record, marg. p. 479.

12. The Court erred in allowing the witness, Henry Warten, to testify, against plaintiffs' objection, as follows: "Yes, sir; and Mr. Williams bought about $20 that day and remarked: 'I will pay cash as soon as I get the money from my son-in-law,' and a few days after he came in and said his son-in-law did not have the money and asked me to get Mr. Miller to run him, and I saw Mr. Miller and he run him." Record, marg. p. 504.

13. The Court erred in that part of his general charge to the jury excepted to by the plaintiff, which portions excepted to are as follows: "That the jury need not consider the question of the general assignment made on the day of the transfer because the Court has reached the conclusion that under the statute of Alabama on that subject and the decisions of the Supreme Court of Alabama in exposition of the statute, that the general assignment of the notes and accounts of Henry Warten, though made on the same day as the transfer in question, does not affect the validity of the transfer of Henry Warten to Schoolfield, Hanauer & Company; if otherwise, as heretofore stated, the transfer is not objectionable. I think I may say this: that the authority relied on here by the plaintiffs to establish their proposition that because this thing was done on the same day or because it was done by Henry Warten in contemplation of insolvency, that therefore the Court will consider the whole transaction—that is to say, the transfer of the property by Henry Warten to Schoolfield, Hanauer & Company and the general assignment (or what is called the general assignment) made on the same day—as one and the same transaction, and when that is the case it would be the same as a preference, and I say preference now, but I should rather say a sale, because I think there is a difference between a payment and a preference and a sale and a preference, and that distinction is found in the decisions, but I think it is not, perhaps, found in the decisions to which my attention has been called, and I think the Federal authorities treat the payment of a debt the same as if it were a preference by a deed of trust or something of that kind, and I am not disposed to question the answer that the counsel made to me when I called attention to that point, but the ground upon which I rest my view is this: that, although that may be so under those various statutes of Colorado and Illinois and perhaps others, and without stopping now to consider whether these statues are the same as the statute of this State, it is a pretty clear proposition to

my mind that the Supreme Court of Alabama in exposition of this statute—not merely in one case, the first case, to which Captain Humes called attention—does seem to bear him out, and in another case to which Mr. Shelby called my attention. If these decisions stood alone as the exposition of the law of Alabama, I would hold with them, but the later decisions upon this subject do not sustain that view. There is plenty of cases here. I can't call the right case now. There is a case of Otis vs. McGuire, and then there is a case of Street, and there are a number of them, and I think the Supreme Court of Alabama has gone further upon this subject, perhaps, than some of the courts of other States in sustaining a transfer of property in extinguishment of a debt, though it may have been made in the same day. Such a transfer, when so made in payment of the debt by absolute conveyance, and not a mere deed of trust, where it is not a mere security, but an absolute sale, such a transaction is sustained, and therefore I say to the jury, you need not consider that question."

To that part of the general charge which is as follows, to-wit: "If, however, the jury shall believe, and it is so claimed, that in this race of diligence between the creditors an advantage was sought by Bamberger, Bloom & Company in this, that they gave an extension (which they knew was not the extension contemplated by the letter of December 27 of last year) in the hope or with the view that Schoolfield, Hanauer—would give an extension for a year, and that by taking short paper they would thereby get an advantage over Schoolfield, Hanauer & Company, then, if that be a true solution of the transaction, Bamberger, Bloom & Company have no right to complain." Record, marg. p. 534-536.

14. The Court erred in giving to the jury written charge No. 1, asked by claimants, which is as follows, viz: "Before the plaintiff can recover in this case the jury must be satisfied from all the evidence that Schoolfield, Hanauer & Company committed a fraud on the creditors of Warten, and unless such fraud is shown the verdict should be for the claimants." Record, marg. p. 537.

15. The Court erred in his remarks to the jury in giving said charge No. 1, asked by claimant, viz: "I think I ought to say, in reference to that, that the fraud complained of here is that there was in this transfer—this conveyance of the property—a fraud, in that it has in it some secret benefit reserved to Warten. I give it with that understanding." Record, marg. p. 538.

16. The Court erred in giving to the jury charge No. 2 asked by the claimant, viz: "I charge you that if you find from the evidence that on or about the 13th day of January, 1890, Henry Warten, the debtor, then insolvent or in failing circumstances, made an absolute sale of his property to Schoolfield, Hanauer & Company in payment of an antecedent debt by way of preference over other creditors, their debt being honestly due and the price or consideration received being fair and adequate and no interest was reserved by him, his mere fraudulent intent does not vitiate the conveyance, because the act itself is legal and fraud without damage gives no right of action.

These concurrent facts absolutely rebut all inferences that might be drawn from attendant badges of fraud, if any there are, and impart validity to the conveyance as an allowable preference of a particular creditor. Record, marg. p. 538.

17. The Court erred in giving to the jury charge No. 3 asked by claimants, namely: "If you find from the evidence that the claimants bought the property in controversy of said Warten, on or about the 13th day of January, for a full and adequate consideration and at a price which was the fair value of the property, then I charge you that the burden of the proof is on the plaintiff, Bamberger, Bloom & Company, to show its fraudulent character or that a benefit was reserved for said Warten." Record, marg. p. 539.

18. The Court erred in giving to the jury written charge No. 4 asked by claimant, viz: A debtor in failing circumstances, or an insolvent debtor, has the right to give preference in the payment of his debts, and if you find from the evidence in this cause that Henry Warten sold the stock of goods to Schoolfield, Hanauer & Company in payment of an honest antecedent debt due from him to them, at a fair and reasonable price, and did not reserve any benefit or interest therein, the verdict of the jury should be for Schoolfield, Hanauer & Company. Record, marg. p. 539.

19. The Court erred in giving to the jury written charge No. 5, asked by the claimant, viz: "If the jury find from the evidence in this cause that Henry Warten sold the stock of goods in controversy to Schoolfield, Hanauer & Company in payment of an honest debt due from him to them, at a fair and reasonable price, and did not reserve any interest or benefit therein, the verdict should be for the claimants, Schoolfield, Hanauer & Company,

although the known effect of such sale was that the remaining creditors would lose their debts." Record, marg. p. 539.

20. The Court erred in giving to the jury charge No. 6 asked by the claimant, viz: "Every debtor has the right to pay his creditors and every creditor has the right to receive payment in money or in goods from his debtor, and if the jury find from the evidence that Warten paid Schoolfield, Hanauer & Company an honest existing debt by a sale to them of the goods in controversy at a fair and reasonable price, and that Warten retained no interest or benefit therein, the plaintiffs cannot recover, and the verdict of the jury should be for the claimants, Schoolfield, Hanauer & Company." Record, marg. p. 540.

21. The Court erred in giving to the jury written charge No. 6½ asked by claimant, viz: "Fraud is never presumed, but must be proved, and if the jury find from the evidence that the claimants, Schoolfield, Hanauer & Company purchased the stock of goods in controversy from Henry Warten in payment of an honest antecedent debt due to them from him, at a fair and reasonable price, and Warten reserved no benefit or interest, the verdict of the jury should be for the claimants, Schoolfield, Hanauer & Company, notwithstanding Warten might have had a fraudulent intent. In such cases the fraudulent intent is not material." Record, marg. p. 540.

22. The Court erred in giving to the jury written charge No. 7 asked by the claimant, viz: "If the jury believe from the evidence that Henry Warten was honestly indebted to Schoolfield, Hanauer, & Company, and that he sold to them the stock of goods involved in this cause, at a fair and reasonable price, in payment of a valid debt, the sale is valid and the title of Schoolfield, Hanauer & Company is good and legal and must defeat the action in this case unless said Warten reserved a benefit or interest in said sale. The burden of proof is upon Bamberger, Bloom & Company to show to the satisfaction of the jury that such interest or benefit was reserved by Warten, and unless the jury is satisfied that an interest or benefit was received by Warten, the verdict must be for Schoolfield, Hanauer & Co." Record, marg. p. 541.

23. The Court erred in giving written charge No. 8 asked by the claimant, viz: "If the jury find from the evidence in this cause, under the instructions given by this Court, that the sale by Henry Warten to Schoolfield, Hanauer & Company is valid, then

Schoolfield, Hanauer & Company had the legal right to give the stock of goods to Mrs. Warten or sell the same to her on such terms as they desired." Record, marg. p. 541.

24. The Court erred in giving to the jury written charge No. 10 asked by the claimant, viz: "I further charge you that if the proof shows that the sale to Schoolfield, Hanauer & Company by Henry Warten was *bona fide* and for a full price, without benefits reserved to said Warten, and that such sale was made before the general assignment was executed, that such sale was good and not affected by the general assignment subsequently made." Record, marg. p. 541.

25. The Court erred in giving to the jury written charge No. 12 asked by the claimant, viz: "The Court does not charge the jury that Henry Warten had any fraudulent intent in making the sale to Schoolfield, Hanauer & Company, but still, if such fraudulent intent did in fact exist, it is wholly immaterial, if said sale was in payment of an honest antecedent debt at a fair and reasonable price and no benefit or interest reserved for said Warten." Record, marg. p. 542.

26. The Court erred in giving the jury written charge No. 13 asked by the claimant, viz: "If the jury find from the evidence, under the instructions given by the Court, that Schoolfied, Hanauer & Company made a valid purchase of the stock of goods in controversy from Henry Warten, then Schoolfield, Hanauer & Company had a legal right to employ Warten for their benefit to assist in winding up the business and turning the goods into money as promptly and economically as possible." Record, marg. p. 542.

27. The Court erred in giving written charge No. 14 asked by the claimant, viz: "If the jury find from the evidence that prior to the 13th day of January, 1890, Henry Warten had been engaged for several years in an established and extensive business at Athens, Alabama, and that he sold his stock of goods to Schoolfield, Hanauer & Company in a valid way, it is but reasonable that Warten might be employed by Schoolfield, Hanauer & Company as a clerk to assist in the winding up of the business for the benefit of Schoolfield, Hanauer & Company. Such circumstances is not of itself fraudulent." Record, marg. p. 542.

28. The Court erred in giving to the jury written charge No. 15 asked by the claimant, viz: "The Court charges the jury in this case that the inquiry should be directed to the *bona fides* of

the debt and the sufficiency of the consideration and a reservation of a benefit to the debtor. If the transaction is not assailable on some one of these grounds, fraud otherwise has no room for operation." Record, marg. p. 543.

29. The Court erred in refusing to give written charge No. 1 asked by the plaintiff, viz: "A debtor, although insolvent, in this State has the right to prefer one creditor to another, and to convey to him property in payment of a debt; but if at the time he makes such conveyance he contemplated making a general assignment and does on the same day make such an assignment, such preference would be contrary to the spirit of the Alabama statute in reference to assignments and void; so if the jury find from the evidence that before the 13th day of January, 1890, Warten contemplated making a general assignment, and that on that day he executed a transfer of a large portion of his property, including the property levied on and in controversy in this suit, to the claimants, and on the same day made a general assignment, and if the jury find further that Warten's intention to make such assignment was known to Miller, of the firm of Schoolfield, Hanauer & Company, or was known to Mr. McClellan, and that he was acting as attorney for them in preparing the transfer to them, then the preference created by the transfer to the claimants *would* be void, and the verdict should be for the plaintiffs." Record, marg. p. 544.

30. The Court erred in refusing to give the jury written charge No. 2 asked by the plaintiff, viz: "If the jury find that the written transfer of the property involved in this suit to the claimants and the general assignment to McGavock as assignee were part of one plan of Warten to dispose of all of his property with the exception of his exemptions, then the said transfer to the claimants would be contrary to the policy of the Alabama statute on the subject of general assignments, and their verdict should be for the plaintiffs." Record, marg. p. 544.

31. The Court erred in refusing to give the jury written charge asked by the plaintiff as follows, to wit: "If the jury find from the evidence that Warten, being insolvent, determined to quit business, first disposing of all of his property for the benefit of his creditors, and that he consulted and employed an attorney to prepare the general assignment and that among his creditors were Schoolfield, Hanauer & Company, and that Schoolfield, Hanauer & Company employed the same attorney to represent them in securing their debt against said Warten, and if Warten executed a transfer of a large

part of his property to Schoolfield, Hanauer & Company in payment of his indebtedness to them and executed a general assignment of his property to secure his other creditors, and if both papers were written by the same attorney and to carry out the purpose of Warten in making a disposition of his entire estate, then the transfer to Schoolfied, Hanauer & Company would be violative of the statute of Alabama upon the subject of general assignments, and a preference made by such transfer would be void, and the verdict of the jury should be for the plaintiffs." Record, marg. p. 545.

32. The Court erred in refusing to give to the jury, at plaintiffs' request, the following charge, namely: "If the jury believe the evidence in this case, their verdict must be for the plaintiffs." Record, marg. p. 547.

33. The Court erred in refusing to give to the jury, at plaintiffs' request, the following charge, namely: "If any part of the debt claimed by Schoolfield, Hanauer & Company against Warten as the consideration of the transfer of the goods to them is simulated or pretended, that fact would vitiate the whole transaction. If the jury find from the evidence that part of the consideration is composed of the note of Warten for $2,500, which was due and payable to the Schoolfield-Hanauer Company, a corporation under the laws of Tennessee, and that said note was taken from the account of said corporation and placed upon the account of claimants for the purpose of increasing the account of Schoolfield, Hanauer & Company, that account to the extent of said $2,500 would be simulated, and this would vitiate the transaction, and if the jury so find, their verdict should be for the plaintiffs." Record, marg. p. 547.

34. The Court erred in refusing to give, at plaintiffs' request, the following charge, namely: "If part of the consideration of the transfer from Warten to the claimants is a note for $2,500, payable to the Schoolfield-Hanauer Company and owned by them, and if said note was transferred to the account of Schoolfield, Hanauer & Company, and if said transfer was made for the purpose of increasing the firm's debt against Warten, so as to make it equal in amount to the value of the goods and property transferred by Warten to the claimants, the consideration for such transfer to the extent of said note for $2,500 would be simulated, and this would vitiate the transfer, and if the jury so find the facts, their verdict must be for the plaintiff." Record, marg. p. 548.

35. The Court erred in refusing to give to the jury charge No. 12 asked by the plaintiff, namely: "If the jury find from the evidence that the defendant, Henry Warten, being insolvent and contemplating going out of business and making a general assignment of all of his property except the *exemptions* allowed by law, and that he, on the same day and shortly previous to the execution of such general assignment, made the transfer in evidence in this case to the claimants, Schoolfield, Hanauer & Company, for the purpose of preferring them as creditors, and they or their attorney, Mr. McClellan, at the time of said transfer, had notice or knowledge of the said purpose of said Wharten to make said general assignment, then the said assignment and said transfer are part and parcel of the same transaction, and the said transfer, so far as it gives a preference to the payment of the claimants' debt, is fraudulent and void, and the claimants acquired no title thereby to the property in dispute, and the verdict of the jury should be for the plaintiffs." Record, marg. p. 549.

36. The Court erred in refusing to give, at plaintiffs' request, charge No. 13, as follows: "If the jury believe from the evidence that the promissory note for $2,500 made by Henry Warten on June 10, 1889, payable to the order of Schoolfield, Hanauer & Company, at the office of Schoolfield-Hanauer Company, four months after date, and endorsed: 'The Schoolfield-Hanauer Company, p'r W. W. Schoolfield, treasurer,' was taken and endorsed by said corporation, and it let said Warten have the amount thereof, less discount, being $——, by crediting his account with said corporation for $——, as shown by said statements of said accounts in evidence in this case, then said draft became the property of said corporation and it was an indebtedness due by said Warten to it; and if the jury further believe from the evidence that said indebtedness was transferred from the account of said Warten with said corporation to the account of said Warten with said firm on or about the 11th day of January, 1890, for the purpose of evading the law of the State of Alabama, which prohibits foreign corporations from doing business in the State of Alabama without known place of business and authorized agent therein, the jury would be authorized to find that said indebtedness was the property of and due to said corporation, and not said firm, when said alleged transfer of the stock of goods in dispute in this suit to said firm by said Warten was made; and should they so find, in that event their verdict should be for the plaintiffs." Record, marg. p. 549.

ARGUMENT.

The refusal of the court below to give the general charge in favor of the plaintiffs was erroneous. The bill of exceptions expressly states that it contains all the evidence. We say a fair and impartial consideration of that evidence in the light of the law leads to the conclusion that Warten in his transactions between January 1, 1890, and January 13, 1890, with his various creditors, pretended and otherwise, had the manifest purpose and intention of defrauding these plaintiffs, and that the claimants knew of it, and were parties to it. The law which condemns transactions of this character as fraudulent, does not require that the purpose shall be to hinder, delay or defraud all of the debtor's creditors. If the purpose is in regard to one, then this is sufficient. It is because of the moral obliquity of the thing that the law condemns it, and not because of the number of sufferers from it.

This Court in the case of Rea vs. Missouri, 17 Wall., 543, in regard to the character of testimony necessary to establish fraud and the weight to be given to circumstances in such a case, says: "To establish fraud, it is not necessary to prove it by direct and positive evidence. Circumstantial evidence is not only sufficient, but in most cases it is the only proof that can be adduced. It was not necessary in this case, for the defendants, in order to maintain the issue on their part, to prove by direct and positive evidence, that Fuller had a secret trust or property in the goods. It was sufficient if they proved such facts and circumstances tending to that conelusion as might reasonably induce the jury to believe that he had such trust or property."

The Supreme Court of Alabama, in a case very much like the case at bar, says: "The world cannot be too often told that in judicial administration as in morals, that which cannot be accomplished directly, cannot be attained by indirect means."

Rochester vs. Armour, 92 Ala., 439.

We propose to use as a test for determining the legal conclusion deducible from the facts of this case, the legal standard of morals announced in the opinions from which the above quotations are made, adopting tbe method therein prescribed for ascertaining the truth. The application of the law, as thus interpreted, to the facts of the case, is not difficult. The testimony shows that Warten on January 13, 1890, being the day he sold or pretended to sell, the stock of goods to Schoolfield, Hanauer & Company, was indebted to the plaintiffs in the sum of about $6,500.

The plaintiffs were wholesale dry goods merchants, engaged in that business in Louisville, Kentucky. They had been engaged in this business at Louisville for about forty-seven years, their yearly sales amounting to from three to four million dollars.

Warten was a merchant engaged in retail mercantile business in the town of Athens, Ala., and had been thus engaged in that business since 1881. This indebtedness of his to the plaintiffs was on account of merchandise kept by them for sale and purchased by him in his mercantile business from them during the year 1889, considerably more than half of the indebtedness having been incurred in the purchase of goods in the former part of the year, largely in the months of January and February. Mr. Goldsmith, who represented the firm of Bamberger, Bloom & Co., termed their credit man, says in his testimony, "On the 12th day of August, 1889, Mr. Warten was owing our firm for purchases from January, 1889, to that date, (excepting small bill August 6th, 25 cents,) $4,719,36, and for this amount he sent us at that time a note dated August 6th, 1889. On the 30th of December, 1889, after having made a number of other purchases from Bamberger, Bloom & Co., and certain charges having been made for interest, a settlement was made with him for the entire amount of purchases made, including August and the amount of this note, $4,719.36, together with protest fees. Notes were taken from Warten for the greater part of that, all but $216.49, and the note for $4,719.36 was delivered to Mr. Warten. That transaction occurred December 30, 1889." One of these notes was for $1,000, payable January 15, 1890; four others for $500 each, payable respectively February 1, February 15, March 1, and March 15, 1890; the rest, three in number, were for $1,142.52 each, payable respectively November 1, November 15, and December 1, 1890. It will thus be seen that Warten during 1889 purchased of the plaintiffs goods to the amount of $6,644.01, and that on this indebtedness he never paid them one cent. Warten says his out standing liabilities, when he made the general assignment, were about $12,000 or $13,000; that the statement shows $15,000, but the Louisville Banking Company's debt of $2,000 was included and the Decatur stock was not put in the assets of the assignee, and that about paid the whole debt. Record, p. 283. He further says that he considered as collectable about $20,000 of the claims he assigned to his assignee. Record, p. 283. In this connection the assignee and those he selected to appraise the property assigned

to him valued it all at about $2,500. It consisted almost entirely of debts due from customers, and when this case was tried in October, 1890, the testimony shows that only about nine hundred dollars had been collected, and the greater portion of this paid over to Warten on his claim of exemption. Record, pp. 101, 102 and 285. So the practical result of the thing evidently is that, under the general assignment, the creditors get absolutely nothing. This testimony shows, among other points, Warten's bad faith and reckless disregard for the truth. No man in his right mind, if these notes and accounts which were embraced in the general assignment were worth, as Warten says they were, $20,000, would have acted as he did under the circumstances unless for dishonest motives and purposes. In this connection there are three letters in evidence from Warten to the plaintiffs. They are as follows: Record, p. 168.

ATHENS, ALA., November 15, 1889.

"*Messrs Bamberger, Bloom & Co, Louisville, Ky.:*

GENTLEMEN:—Your favor of the 13th inst. received. I am now meeting a good many obligations; collections are slow and bad—kindly ask you to wait a little while.

Yours respectfully,

HENRY WARTEN."

ATHENS, ALA., December 7th, 1889.

"*Messrs Bamberger, Bloom & Co, Louisville, Ky*:

GENTLEMEN:—I have to ask you a favor which I hope you will grant. I am due a note of $4,719.30 on the 15th, which please let me renew for 60 or 90 days.

"Our county has made about one-fourth of a crop, and, as it is generally the case where a cotton crop is short it makes the farmers hold their cotton for unreasonable prices. I have now men out offering ½ to 1 cent per pound bonus, and I think I will be able to collect in the next two months from 15 to 20 thousand and maybe more. I have now over fifty thousand dollars standing out, and have only collected so far about $13,000. As this is the first time I have ever asked you to renew a note for me, I do hope that you will grant it. I assure you that my actions towards you in the future will show my appreciation, and you shall enjoy the bulk of my business hereafter.

Yours truly,

HENRY WARTEN."

"ATHENS, ALA., December 12, 1889.

Messrs. Bamberger, Bloom & Co, Louisville, Ky :

GENTLEMEN:—Yours of yesterday received. I regret that I cannot comply with your wish. If I could have done so I certainly would have sent it to you. Regret that you cannot accommodate a customer like Henry Warten.

Yours truly,

HENRY WARTEN."

There is no evidence that any other communication, verbal or written, occurred or passed between the plaintiffs and Warten about his indebtedness to them until he went to see them in the latter part of December armed with his letter from the Schoolfield–Hanauer Company. That letter is as follows: Rec., p. 162.

"MEMPHIS, TENN., December 27th, 1889.

Messrs Bamberger, Bloom & Co, Louisville, Ky :

DEAR SIRS:—Our mutual friend and customer, Mr. Henry Warten, through, we believe, no fault of his own, but owing to disastrous failures of crops in his section, finds himself forced to ask for extension of his particular friends, and he recognizes you among that number and from whom he can ask that favor.

Having confidence in his honor and integrity and business qualifications, we have agreed to give him extension, provided you will do so. He informs us that one of his creditors has agreed to give him extension and he will only ask it of three houses, viz: yours, ourselves, and the party who has agreed to it.

Yours very truly,

THE SCHOOLFIELD–HANAUER CO.,

Per W. W. SCHOOLFIELD,

President."

This letter, as the testimony shows, was written on the day it bears date by Mr. Schoolfied at Memphis, Tenn., at the request of Warten and under the influence and impressions created upon the mind of the writer by Warten in his conversation with the writer at the time the letter was written. H. G. Miller, who is a member of the firm of Schoolfield, Hanauer & Company, and also a stock-holder and one of the managers of the Schoolfield-Hanauer-Company, says in his testimony: Record, p. 205.

"The day the letter was written Warten came to me and asked me to give him this extension until December; told me that if he could

get that from two others of his large creditors he would not ask the others; that would enable him to pay them off; that he did not want to owe his little creditors. I called Mr. Schoolfield down and we consulted about it. I told him to go and write a letter, and he went and wrote it, and I looked over it and handed it to Warten."

It will be observed that Mr. Miller is shown by their testimony in the case to have been the principal actor for his firm and corporation in all these matters, and he evidently prides himself on his shrewdness and capacity for taking care of himself in such emergencies. He was apparently the Doctor of the Concern for "the sick ducks." Consequently he visited Mr. Warten several times during the fall and winter of 1889, and, as the saying goes, "sat up with him of nights." Mr. Miller says Warten wanted an extension until December, we suppose he means December, 1890. The letter which Schoolfield wrote by his direction, does not say for what length of time the extension is wanted. Besides, under the circumstances, it would have been unreasonable for Warten to have made any such request of the plaintiffs. The greater portion of this debt was incurred the earlier part of the year previous, and an extension of several months had already been given, and neither the whole nor any part of the indebtedness had been paid. Warten, from his own testimony, was then handling a large amount of money, and he had paid or secured to all of his larger creditors either the whole or a part of his indebtedness to them. He had neither paid nor secured the plaintiffs anything on his indebtedness to them. Warten, in his testimony, says that between September 1, 1, 1889, and January 13, 1890, he paid to his creditors in money twenty odd thousand dollars, (Record, p. 170,) and the proof further shows that he handled during that season 1,772 bales of cotton, (Record, p. 182,) which, at $40 to $45 a bale, the then average price of cotton according to his testimony, would make upwards of $70,000. Of this cotton the claimants and their corporation got 665 bales. Record, p. 182. The fact is that Warten did obtain an extension from the plaintiffs, and such an extension as any reasonable man would say, considering the circumstances, was as fair and liberal as he had any right to expect. He accepted the extension thus granted, and the plaintiffs had every reason to believe he did it in good faith, with the purpose, intention and expectation of paying the debt, and not with a view of disarming the plaintiffs of watchfulness and vigilance, throwing them off their

"ATHENS, ALA., December 12, 1889.

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GENTLEMEN:—Yours of yesterday received. I regret that I cannot comply with your wish. If I could have done so I certainly would have sent it to you. Regret that you cannot accommodate a customer like Henry Warten.

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fused. If the two first contain a correct statement of the law, then the last should have been given, because the facts upon which the legal conclusion stated in the two first rest are clearly established. That these two first charges contain a correct statement of the law we think is clear. In City National Bank vs. Jeffries, 73 Ala., 194, it is said: "It is clearly the law that if a debtor, assuming to compose his debts on equal terms, secretly secure a preference and larger payment to one or more of his creditors without the knowledge of the others, this is a fraud alike by such debtor, and by the creditor attempting to be preferred. Such fraud, secretly perpetrated, would be a fraudulent disposition of property, and if the property thus conveyed was subject to the grantor's debts, it would be a fraudulent disposition of property, and authorize an attachment at the suit of a creditor, attempted to be defrauded thereby."

"In the race of diligence the creditor who seeks to become preferred, must do no more than, *by fair methods*, (the italics are our own,) obtain payment of his own claim."

Seaman vs. Nolen, 68 Ala., 466. 100 Ala., 626.

So also it is said in a case involving facts analogous. 1 Flippin, 36. "Fraud is as difficult to define as it is easy to perceive. It is sometimes said to consist of "any kind of artifice employed by one person to deceive another." But the term is one that admits of no positive definition, and cannot be controlled in its application by fixed and rigid rules. It is to be inferred or not, according to the special circumstances of every case. Whenever it occurs, it vitiates the transaction tainted by it. No contract, although it be apparently fair and in compliance with the formalities of the law, can be enforced, if it be essentially unfair, or is founded upon a dishonest or corrupt consideration. The law has ever scrupulously guarded the integrity and good faith required in the general compromises of creditors with their debtors. It is, as well from considerations of public policy as of sound morals, that these transactions should be conducted with truth and fairness, lest any undue, secret advantage be secured to one creditor at the expense of another."

Fenner vs. Dickey & Whipple, 1 Flippin, 34.

1 Wade on Att., par. 221.

Buswell vs. Davis, 10 N. H., 413.

Campbell vs. Hopkins, 87 Ala., 179.

The facts of the cases cited are not exactly similar to those of the case at bar, but the principles of law announced are no less applicable in the one than the other. Negotiations were opened with the plaintiffs by this letter written by Schoolfield, one of the Defendants in Error, by the direction of Miller, the other Defendant in Error, at the request of Warten, looking to an arrangement between them and the Plaintiffs and Warten by which he would be enabled to tide over his financial troubles. It cannot be said that because this letter is signed the Schoolfield-Hanauer Company, per W. W. Schoolfield, President, it was not equally binding and obligatory upon Schoolfield, Hanauer & Company. The evident effect of it was to lull the plaintiffs into a feeling of temporary security and thereby to enable Miller, without molestation, embarassment, hindrance, or interference from them, to work on Warten, and secure a preference. During the time that elapsed between December 30, the date of the notes given in extension, and January 13th, the date Warten sold out to Miller, the proof not only fails to show that these plaintiffs did anything toward attempting to collect or secure the debt, but the uncontradicted affirmative evidence proves that they did nothing, relying evidently upon the good faith they had a right to expect from Warten and the Defendant in Error. This is shown not only by the positive testimony of Bamberger and Goldsmith, but also by the telegrams the plaintiffs sent to Warten and Schoolfield, Hanauer & Company, and the letter they wrote to Schoolfield, Hanauer & Company. Bamberger says: "The first thing we did after we learned of the sale, we telegraphed to Schoolfield, Hanauer & Company, saying: 'Understand here you have bought Henry Warten out. Are we protected.'" Record, p. 267. This telegram and the answer to it are as follows: Record, p. 268.

"January 13th, 1890.

To Schoolfield, Hanauer & Co., Memphis, Tenn :

Reported here you bought out Henry Warten. Is it true? Are we preferred? BAMBERGER, BLOOM & CO."

"MEMPHIS, TENN., Jan. 13, 1890.

To Bamberger, Bloom & Co , Louisville, Ky :

Our Mr. Miller is at Athens. We have no particulars.

SCHOOLFIELD, H.—COMPANY."

The telegram to Warten was as follows:

"Understand you have sold out to Schoolfield, Hanauer & Co. Are we preferred?" Record, p. 268. To this Warten never replied.

The letter to Schoolfield, Hanauer & Company, although shown to have been written and mailed in the usual course of business, on the same day the telegrams were sent, seems, from Miller's testimony, never to have been received by the claimants or their corporation. A very remarkable, unusual, inexplicable circumstance. Record, pp. 268, 288 and 560. This letter is as follows: Record, p. 288.

"January 13th, 1890.

Messrs Schoolfield, Hanauer & Company, Memphis, Tennessee:

GENTLEMEN:—We were very much surprised to learn today that Henry Warten, of Athens, Ala., had sold out to you, especially as you had written to us December 27th, asking that we sign, in conjunction with you and one other creditor, an extension agreement for said Warten. We did so at your suggestion, taking his papers as follows: January 15, $1,000; February 1, $500; February 15, $500; March 1, $500; March 15, $500; November 1, $1,142.52; November 15, $1,142.50; December 1, $1,142.50.

We cannot understand why he should sell out, after having been granted the extension. We presume that we have been preferred in this matter, and would kindly ask you to let us hear from you by return mail, with full particulars.

Yours very truly,

BAMBERGER, BLOOM & COMPANY."

In this connection we wish it borne in mind that this extension had been granted without any security being required, notwithstanding the then shaky condition of Warten financially. Other creditors had been secured. Cotton was being shipped to the defendants or their corporation. Hess, Henle & Company and other creditors' claims were secured by mortgages transferred to them. With the exception of the claimants these plaintiffs were the largest creditors of Warten; and plaintiffs gave the extension $3,000, to be paid in instalments at intervals of fifteen days during the former part of 1890 and the balance $3,427.52 in three equal instalments at intervals of fifteen days, in the latter part of 1890, the first falling due November 1. This extension was granted without any security being required, simply the note of Warten. This shows conclusively that these plaintiffs in granting the exten-

sion upon these terms were acting in good faith upon the inducements contained in the letter to them, confiding in the integrity of Warten as vouched for in the letter and upon the presumption of good faith toward them by Warten and these defendants. The letter reads: "*Our mutual friend* and *customer*, Mr. Henry Warten, through, *we believe*, no fault of his own, but owing to disastrous failures of crops in his section, finds himself forced to ask for extension of his *particular friends*, and he recognizes you among that number and from whom he can ask that favor. *Having confidence in his honor and integrity and business qualifications*, we have agreed to give him extension provided you will do so. He informs us that one of his creditors has agreed to give him extenson and he will only ask it of three houses, viz., yours, ourselves and the party who has agreed to it." This other party was Hess, Henle & Company. This letter is well calculated to inspire the plaintiffs with the most implicit confidence in three essential particulars so far as their interests were concerned and their action in the matter. First, that they could rely implicitly upon the *friendship* and *loyalty* of Warten to them. Second, that they could confide in his *honor* and *integrity* and *business qualifications*. Third, if they granted an extension, it was all he needed to pull through his financial difficulties. Can it be doubted that this letter, its commendations of Warten, and offer of co-operation in heiping him tide over his embarassment, coupled with the assurance of Warten made at the time, influenced and induced these plaintiffs to grant this extension without security or endorsement? The letter was calculated to lull them into a feeling of security, repose, and confidence, certainly so far as Warten and the source from which the letter emanated are concerned. It cannot be said that Warten did not get the extension for the length of time desired, and therefore he and Miller were free to act, untrammelled by this letter and its assurances, to fix things up their own way during the time for which the extension was granted. Warten had obtained the indulgence from the plaintiffs upon the faith of this letter, coupled no doubt, with his own personal assurances and promises, and neither he nor the defendants had the right to take undue and unfair advantage of it; but this they did in the sale of the goods to the defendants. Warten, in his testimony, puts up the absurd and ridiculous plea that he was forced to accept the extension and give the notes as dictated by the plaintiffs. This is not so, and even if it was, having made the agreement and accepted the

extension, taking up the old note, and giving the new notes, he and the claimants were legaily and morally bound, at least unless the claimants gave notice to the plaintiffs to the contrary, to accept in good faith the extension as granted and not to repudiate and ignore it. It cannot be said that a man of Warten's fertility of resources, to say nothing of his "honor, integrity and business qualifications," as certified to by the claimants in their letter to the plaintiffs, would not be able to raise the $3,000 in two months, which by his notes to plaintiffs he had obligated himself to pay them between the 15th of January and the 15th of March, especially in the light of the fact that after his failure, in the month of June, 1890, he raised for his wife $3,227 in cash, being the cash payment to the claimants on the purchase of the same stock of goods from them by Warten in the name of his wife. Record, p. 151. Warten says he got this money for his wife from Hess, Henle & Company, who he says are the third party referred to in the letter of claimants to plaintiffs as having already agreed to grant his extension. The proof does not show that Hess, Henle & Company were any better friends of Warten in June, 1890, than they were in December 1889, when this letter was written, or in January, February and March, 1890, when these notes matured. The hypnotic influence of Warten, from his account of it, upon these gentlemen in getting money from them whenever he needed it, was apparently as great in January, February and March, as in June. It only required the spell of the hypnotist; there was certainly no business sense in it, unless Hess, Henle & Company had money of Warten's which it would be sacrilegious to suggest, considering Warten's character for "honesty and integrity" as certified by Schoolfield at the direction of Miller. The letters invited, induced and encouraged the confidence in Warten and these defendants which turned out to be misplaced. It makes no difference what may have been the motive in writing and sending it, whether it was true or false, honest or dishonest. Having written it, the law as a matter of good faith required that these defendants should live up to it. Did they do it? The sale by Warten to them and all its attending circumstances show they did not. They took advantage of the feeling of security and the consequent lack of vigilance and watchfulness on the part of the plaintiff engendered by this letter, to procure an undue advantage. Upon this feature of the case the affirmative charge should have been given as requested by counsel for plaintiffs.

Then there is another reason why this charge should have been given. If the facts and circumstances surrounding the case and distinctly proven are such as would lead a reasonable man to the conclusion that fraud existed, this is all the proof the law requires.

Wait on Fraud. Conv. § 13.

Fraud may be proved by circumstances. It is seldom capable of being proved otherwise; and the number or character of the circumstances which may amount to proof of it cannot be defined. Each case depends largely on its own particular facts.

Harrell vs. Mitchell, 61 Ala., 281.

"Where a *bona fide* creditor shows *indicia* or badges of fraud, the burden rests on the grantee to repel the presumptions they generate; if his ability to pay is questioned, he must show the source or means by which he obtained the money, and that there was a real adequate consideration, actually paid; and whatever there may be, not in the ordinary or usual course of such transaction, should be fully explained.

The fact that the son, shortly after receiving a conveyance of lands from an insolvent father, conveys parts of them to each of the other children, without any valuable consideration therefor, casts suspicion on the transaction, which can be removed only by clear and convincing evidence of fairness, good faith, and an actual consideration, really paid.

The relationship of father and son between grantor and grantee; the grantor's known insolvency and apprehension of threatened suits; the failure of the grantee to show with particularity when, where, or how he obtained the means to pay the consideration; the fact that shortly after the conveyance the grantee, without any valuable consideration shown, conveyed parts of the land to each of the other children; the failure to show what disposition the grantor made of the large consideration mentioned in the deed,—justify the court in holding the conveyance fradulent as to existing creditors."

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So also in Hubbard vs. Allen, 59 Ala., 296, the Supreme Court says: "The *onus* of proving that the deeds and transfer were not merely voluntary but were founded on an adequate and valuable consideration is, consequently, by law, cast on the defendants. Whatever may have been the motives of the parties in its execu-

extension, taking up the old note, and giving the new notes, he and the claimants were legaily and morally bound, at least unless the claimants gave notice to the plaintiffs to the contrary, to accept in good faith the extension as granted and not to repudiate and ignore it. It cannot be said that a man of Warten's fertility of resources, to say nothing of his "honor, integrity and business qualifications," as certified to by the claimants in their letter to the plaintiffs, would not be able to raise the $3,000 in two months, which by his notes to plaintiffs he had obligated himself to pay them between the 15th of January and the 15th of March, especially in the light of the fact that after his failure, in the month of June, 1890, he raised for his wife $3,227 in cash, being the cash payment to the claimants on the purchase of the same stock of goods from them by Warten in the name of his wife. Record, p. 151. Warten says he got this money for his wife from Hess, Henle & Company, who he says are the third party referred to in the letter of claimants to plaintiffs as having already agreed to grant his extension. The proof does not show that Hess, Henle & Company were any better friends of Warten in June, 1890, than they were in December 1889, when this letter was written, or in January, February and March, 1890, when these notes matured. The hypnotic influence of Warten, from his account of it, upon these gentlemen in getting money from them whenever he needed it, was apparently as great in January, February and March, as in June. It only required the spell of the hypnotist; there was certainly no business sense in it, unless Hess, Henle & Company had money of Warten's which it would be sacrilegious to suggest, considering Warten's character for "honesty and integrity" as certified by Schoolfield at the direction of Miller. The letters invited, induced and encouraged the confidence in Warten and these defendants which turned out to be misplaced. It makes no difference what may have been the motive in writing and sending it, whether it was true or false, honest or dishonest. Having written it, the law as a matter of good faith required that these defendants should live up to it. Did they do it? The sale by Warten to them and all its attending circumstances show they did not. They took advantage of the feeling of security and the consequent lack of vigilance and watchfulness on the part of the plaintiff engendered by this letter, to procure an undue advantage. Upon this feature of the case the affirmative charge should have been given as requested by counsel for plaintiffs.

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tion, as to creditors whose rights were existing, these deeds and transfers must be regarded as merely voluntary, and they *must be* presumed *to be fraudulent* nntil the contrary is shown."

We quote further from Hubbard vs. Allen, *supra*, page 299: "In this case there is not only insolvency with its attending vexation of suits and judgments, and the relationship existing between the parties, but there is a combination of other suspicious circumstances, exciting the jealousy of the Court, and which demand clear, full proof, not only *of consideration*, but of the *freedom of the transaction from* all impurity *of intention.*"

There is a combination of suspicious circumstances and badges of fraud in the case at bar exciting the jealousy of the law, and which demand clear, full proof, not only of consideration, but of the freedom of the transaction from all impurity of intentiou. Now, what are these suspicious circumstances and badges of fraud? There is no doubt that Warten's conduct in taking advantage of the delay and extension the plaintiffs granted him to sell out and dispose of all his property was a fraud upon them. And his testimony and all the testimony in the case goes to show that he went systematically to work almost immediately upon his return home from his visit to Louisville in the latter part of 1889 to make way with all his property and to fix it so that the plaintiffs would get nothing. Among other things that he did, which were unusual and not in the regular and usual course of business, he had an inventory taken of goods in the store at Athens. It was customary to take an inventory once a year, sometime in August, not in January. His excuse for this is that he was away from home at Elkmont Springs in 1889 at the time the inventory should have been taken as usual. The proof shows that Elkmont was only a short distance from Athens, besides the clerks employed in the store took the inventory, and not Warten. It is most probable that the inventory was taken as part of the scheme, afterwards carried out, of going though the form of a sale to Schoolfield, Hanauer & Company. This view of it is corroborated by the testimony of witnesses engaged in taking the inventory. They say that Warten wanted them to place a low valuation on the goods, and complained that a high estimate was made of portions of it. Record, pp. 105, 255.

What could he have wanted with an inventory and a low valuation of the goods at that time but for the purpose afterwards developed in the sale to Schoolfield, Hanauer & Company? If he had wan-

ted this inventory for the legitimate purposes of business, it would have been to his interest and that of his credit for the stock of goods to inventory high, and not low. But it was for a different use that he wished it. Then the telegram to Miller and his immediate response by his presence at Athens as fast and as soon as the train could carry him, points unerringly to an understanding between them, and a knowledge, on Miller's part, of Warten's purposes, schemes, and designs. In regard to the deed to the Elkmont property, Miller, Sr., and Warten both say that Miller went to Athens from Memphis in answer to telegram from Warten, dated January 9 (Thursday,) and that Miller did not get to Athens until Saturday January 11th, about 11 o'clock in the morning, and that it was not until after the arrival of Miller on this occasion that the transaction took place which was finally consummated and executed by delivery of papers and possession of property on the morning of Monday the 13. If this is so, then why is it that the deed from Warten to the claimants of the Elkmont real estate was acknowledged on Thursday, January 9, the day the telegram was sent and two days before Miller's arrival in Athens? The plaintiffs offered in evidence a copy of this deed and certificate of acknowledgment from the records of the court of probate, where, under the law of Alabama as a muniment of title, it is required to be deposited for record by the grantee. Record, pp. 286-87. No explanation is offered or attempted by the claimants of how it happened that this deed was executed and acknowledged four days before the day the witnesses Warten and Miller say the transaction occurred by which this real estate, with other property real and personal, was sold by Warten to claimants, and two days before any negotiations were had looking to the sale. How did it happen that Warten and his wife executed and acknowledged this deed on the 9th, if there were no arrangement or understanding between him and the claimants at the time? The claimants had an opportunity of explaining the matter, if they could, for Miller was on the stand as a witness in rebuttal after this deed was offered, and their failure to do so raises the presumption in the eye of the law that it was not susceptible of an explanation which would be at all satisfactory, and, therefore, they chose to leave it unexplained, with the burden of such presumptions upon it as the law might indulge. This presumption is, that Warten when he executed that deed must have had an understanding with the claimants that he could make use of them as a cloak for his covinous purposes.

Another circumstance is the time of preparation and execution of bill of sale prepared Saturday night and executed about five o'clock Monday morning, followed on the same day by the general assignment by which McGavock, who seems to have been Warten's *fidus Achates*, is made assignee, and the assignee proceeds immediately to employ his benefactor Warten at $6.00 per diem, for what length of time is uncertain and left in doubt by the unwillingness and prevarication of Warten as a witness. On cross-examination he is asked: Record, p. 182.

Q, When did you commence business for the assignee under the general assignment?

A. I think he engaged me about three days after I made the assignment.

Q. What did he agree to pay you?

A. $6.00 a day.

Q. How many days were you in his employ?

A. I think it was either thirty or thirty-two days.

Q. Were you employed continously every day during that time?

A. Yes, sir.

Q. Where was his office?

A. It was at the house of Schoolfield, Hanauer & Company.

Q. In the same house you had done business in?

A. Yes, sir.

Q. What did you do for him?

A. At first I went over all the books and drew down balances to find out what balances each man owed. Then I would make out balance-sheet of what each man owed the house of Henry Warten.

Q. And you were in the employ of the assignee from the 16th of January to the 16th of February?

A. Yes, sir.

Q. Were you in his employ after that time?

A. *No, sir.*

Q. When did you go into the employ of Schoolfield, Hanauer & Company there?

A. I think it was February 3rd or 4th.

Q. What did he agree to give you?

A. *$100 a month for four months.*

Q. Did they pay you?

A. Yes, sir.

Q. What did you do for them?

A. I was engaged as salesman, and they wanted me to look after those claims for collection.

Q. Did you keep the books?

A. I did not. Walter Miller kept the books.

Q. Then during part of the time the assignee was paying you $6.00 a day you were also getting a salary of $100 a month from Schoolfield, Hanauer & Company?

A. I was.

Q. You collected both?

A. I did.

Q. Look at page 459 of that ledger. Now there is an entry, "March 3 Mrs. O. C. Officer, by note, $73.21." Whose handwriting is that?

A. Mine.

Q. Did you make that March 3rd?

A. I did.

Q. Were you in the employ of the assignee then?

A. I think so.

Q. That was more than one month after this assignment?

A. Yes.

Q. Look at page 376 of that book. There is an item "March 4, J. P. Hayes, note, $82." In whose handwriting is that?

A. Mine.

Q. Were you in the employ of the assignee at that time?

A. I think I was. I worked for him about thirty odd days. I don't mean counting Sundays; I mean working days. There is 25 days in a month—working days.

Q. Look at page 224. March 5, 1890, A. P. Williamson, note, $52.79." In whose handwriting is that?

A. That is mine.

Q. Were you in his employ then?

A. I was.

Q. Look at page 442: "February 17th, W. G. F. Sylvester." In whose handwriting is that?

A. Mine.

Q. Look at page 262: "J. C. Malone, March 10th, by cash, $50; by loan, $6.75." In whose handwriting is that?

A. Mine.

Q. Did he pay you that $50?

A. No, sir.

Q. Who did he pay it to?

A. The assignee.

Q. Was that money paid to the assignee in your presence?

A. No, sir.

Q. Did you see the money?

A. I did not. The assignee told me to give J. C. Malone credit for $50.

Q. On March 10th were you in the employ of the assignee?

A. Yes, sir.

Q. At six dollars a day?

A. Yes, sir.

Q. What other work did you do on March 10th besides making that entry?

A. I was working for Schoolfield, Hanauer & Company.

Q. What else did you do for the assignee that day?

A. I don't remember.

Q. How much did the assignee collect on the claims you transferred to him between the time the transfer was made and up to and including March 10th, 1890?

A. I don't know. I did not keep the cash book for him."

This testimony is quoted here at length just as it was given because it is the strongest argument that could be adduced of the crookedness and fraudulent character of the whole transaction, including the bill of sale and the general assignment. Miller, Sr., in his testimony, unintentionally adds force to this argument. On cross-examination he testifies as follows:

Q. When you employed Warten how much did you agree to pay him?

A. $100 per month.

Q. Did you know then that he was in the employ of the assignee at $6 a day?

A. No, sir.

Q. Did you know he was in the employ of the assignee at all?

A. I knew he was to make out a statement; I heard that before I left there; but I didn't think it would take him more than 4 or 5 days; I don't see how it took 30 days to make out a statement, nohow.

Q. Maybe at $6 a day it would take him longer?

A. Maybe so. Record, p. 214.

The whole thing was evidently fixed up by Warten for his own benefit and carried out by him through the assistance of Miller, Sr., and McGavock. Just at this point this whole case bristles all over with circumstances of suspicion and badges of fraud, undisputed and unexplained. McGavock says that all the assets assigned to him were not worth exceeding $2,500; that they consisted chiefly of notes and accounts; and that during his assigneeship he collected about $900, which he paid over to Warten on his claim of exemption. Record, p. 285. Under the statute law of Alabama a debtor is only entitled to an exemption of $1,000 of personal property. Here we see from the deed of assignment and the schedule of exemptions thereto attached, that Warten reserved and withheld at the time of its execution his exemptions, which according to the schedule consisted of $1,000 in value of personal property, including *cash $895.75*. Record, pp. 143 and 144. ~~And~~ And in the face of this his assignee allows him and pays him out of the assets which came to his hands for the benefit of the creditors another exemption of $900 in money collected by him for the creditors, and in addition $6.00 per day for his services from the middle of January to the middle of March. Not satisfied with this,

Mr. Miller piles on another $100 a month out of what he got. This is in striking contrast with Miller's stinginess and meanness with others to all appearances certainly more worthy and equally capable as Warten, unless, perhaps, to do the unfair thing. The testimony shows that he took advantage of the necessities and dire situation of Markam, an experienced and competent clerk, who was thrown out of employment by Warten's failure, and paid him one dollar a day until Warten suggested that he ought to be paid $1.50 a day, (Rec., p. 285,) preferring to continue Warten at $100 per month; and Warten's *fidus Achates*, rather than lose his invaluable services, engages him for the term of a whole year at the rate of $1,000 a year. He did not employ Warten by the year, but Warton says "$100 a month for *four months*." Rec., p. 183. The inquiry naturally arises. Why was Warten employed for four months exactly? Was there any connection with the duration of this employment and the sale to Mrs. Warten, which was made just about four months after his employment began? This employment of Warten and McGavock, at these prices and under these circumstances, is unexplained except by Miller, Sr., who says in his testimony that he employed Warten because "McGavock was going to quit." Rec., p. 203. This was on his examination in chief. On his cross-examination he testified that before he employed Warten he had hired McGavock for one whole year at a salary of $1,000.

"Q. How many clerks did you employ?

A. No one but McGavock.

Q. When did you employ him?

A. That morning of the 13th.

Q. For what length of time?

A. I told him that I wanted him to keep on there at the same wages that Warten was paying him. I didn't know how long I would keep him. I didn't know but what I would sell out in a week. I had to have him, anyhow, to collect debts.

Q. For what length of time did you employ him?

A. There was no contract until afterwards.

Q. When was that?

A. Two weeks afterwards, I reckon. He wrote me that he would not stay there on an uncertainty; that I had to hire him by the year or he wouldn't stay.

Q. And you hired him by the year at what salary?

A. $1,000.

Q. Previous to that you had hired him temporarily at the same rate Warten had been paying him?

A. Yes, sir.

Q. Did you employ any one else?

A. Not then. My son got there the next day, and we did not do any business until we were attached, and there was five days after we were attached before we opened up and got the bond.

Q. When did you employ Warten?

A. Some time after that.

Q. How long after?

A. I think it was two or three or four weeks. I don't know." Record, pp. 212 and 213.

In this connection an effort was made in the testimony of McGavock to sustain this attempted explanation of Warten's employment, but it was a signal failure. Record, p. 98. The fact is that McGavock did not quit at all, but continued in the employment of these people until the trial of this case in November, 1890 just the same as if no change pretended or otherwise had occurred in the possession or ownership of the store. This was brought out on cross-examination of McGavock by counsel for plaintiffs as follows:

Q. In what business are you engaged now?

A. I am salesman in the house of Mrs. Warten at Athens.

Q. How long have you been in her hire?

A. Since, I think, about June 1st, 1890.

Q. Before that in what business were you?

A. In the same business in that house. Record, p 100.

So the only explanation and excuse offered for the employment of Warten by Miller, Sr., is shown by the testimony to be a flimsy pretext, not sustained by the facts as testified to by McGavock and Miller himself. The fact is, that Warten never left that store and never surrendered possession of the goods and the management of the business except in name. He went through the formality of making the general assignment, but under the name of

employment from the assignee, held on to the books of ~~record~~ account and other evidences of debt, and collected and appropriated them to his own use. He went through the formality of the sale to the claimants, but was ~~then~~ at the place of business right after the sale—the day after—ostensibly as the employee of the assignee, McGavock, for a week or so, and thereafter as head clerk and salesman for the claimants, directing the business just as he had done before, going to Louisville and replenishing the stock, and talking and conducting himself just as the owner and manager of the business would have done. Of course he claimed that he was doing all this as the employee of the claimants and in their name. The unfortunate advertisement in the town paper with the name to it of Henry Warten, Manager, is a most potent circumstance going to show how Mr. Warten appeared to others in his conduct in connection with this business. It may be that he did not instruct the newspaper man to put his name to the advertisement; but this, if it be the fact, does not weaken, but rather strengthens and gives weight to the circumstance of its having been done. The presumption is that the newspaper man did it because from the appearance of things about the store Warten was manager. In this connection we invite especial attention to the conduct of Warten, McGavock and Miller, and their declarations in the store whilst it was being run in the name of the claimants, as testified to by the witnesses:

W. C. Stewart, Record, p. 224.
John T. Stewart, Record, p. 226.
W. L. Martin, Record, pp. 233–37.
David Heiman, Record, pp. 238–39.
Everett Hartzell, Record, pp. 243–48.
J. D. Markham, Record, pp. 248–53.
John B. Tanner, Record, pp. 253–57.
L. L. Weir, Record, pp. 257–61.
A. M. Donham, Record, pp. 261–64.

The testimony of each one of these witnesses is important as evidence tending to show the fraudulent character of the transaction between Warten and the claimants. Without referring in detail especially to the testimony of each, we direct attention to that of John T. Stewart as to the general character and value of the evidence. He says that he was owing Warten an account and that it was claimed that it was transferred by him to the claimants, and he produced a letter from Walter Miller, for Schoolfield,

Hanauer & Co., dated April 14, 1890, referring to the account, and stating, "As you promised to come in Tuesday and settle your account, and I had to go to Birmingham, you will pay Mr. Warten and he will receipt for us.

(Signed) WALTER MILLER,
For SCHOOLFIELD, HANAUER & CO.

Now, this account against John T. Stewart is not named in the transfer to claimants as one of the claims transferred to them. Warten, in his rebutting examination, says it is one of the accounts transferred to the corporation, but Stewart was not so informed, and Miller, by his letter, does not say so. In this connection it would have been the proper thing for these claimants to have produced the written evidence of the transfer to the corporation, if it existed, and their failure to do so is a strong circumstance against them. This witness testified to other circumstances equally contradictory of and discreditable to the conduct and fairness of the transaction between Warten and Miller, and their testimony. These witnesses are disinterested and testify in regard to transactions in which they were personally interested. In this connection we also invite attention to the testimony of both Warten and Miller on cross-examination as tending to show the character of this transaction and reflecting the minds of the men who engaged in it. See especially the testimony of Warten. Record, pp. 156–61.

The claimants are shown by the proof in the case to have gone into liquidation in April, 1889, and to have been succeeded in business by the corporation the same month. They were engaged in the wholesale grocery and cotton commission business at Memphis, and Miller, Sr., says in his testimony that he knew nothing about the sale or purchase of dry goods. In the face of these facts, according to his and Warten's testimony, he buys Warten out for this defunct firm and in its name starts in the general retail mercantile business in the town of Athens, with Warten and his man McGavock virtually in charge of the whole thing. Is this not a very unusual proceeding for a wholesale grocery and cotton commission house that has gone into liquidation? Their place of business had been in the city Memphis, a place of 75,000 population, and their business during the year went up into the millions. After they had gone out of this business except for liquidation, we find them here embarking in the retail dry goods and general mercantile business in a small town in Alabama, renting a store

house and employing clerks by the year, replenishiug the stock of goods, and selling on a credit. We are told by Miller, Sr., in his testimony, that all this was done to enable them to collect the debts Warten had transferred to them. This witness, in his examination in chief, is asked this question:

"Q. How long after the trade before you took him (Warten) back?

A. I don't remember the day, sir. I went up to Athens two or three weeks after the trade to look after the stock and see how everything was going on, and I found out that Mr. McGavock was going to quit me, and I was bound to have somebody there that knew the accounts and the stock. The accounts were a big thing with me. If it had not been for them I would have moved the stock of goods to Memphis, and while my son could attend to the business he didn't know anybody—didn't know a man that owed us—and I then employed Warten." Record, p. 203.

"The accounts were a big thing with me." Well, let's see how big a thing the testimony makes of them. There were only three items of indebtedness transferred to Schoolfield, Hanauer & Company, namely: One note on Chas. Getty, secured by mortgage, $1,308; one note on Sam Dunnavant, $13.87; one note on Frank Petty, $186.00. Record, pp. 26 and 151. It will be observed that Warten, in his testimony, (Record, p. 151,) says that a note of John W. Hill for $356, was transferred back to his wife by claimants. How they get it does not appear, certainly not by the bill of sale. Then the indebtedness transferred to the corporation amounted to about $3,800. They were secured by mortgage. This would make the aggregate of debts transferred to the firm and corporation about $5,400, which to enable the claimants to collect, it was concluded best that they should embark in this mercantile business in Athens. The testimony shows that in June, when the sale was made to Mrs. Warten of the indebtedness which was transferred to the firm and corporation, about $800 had been collected, and that during the time the store was run in the name of the claimants goods were sold on a credit to the amount of upwards of $1,700, all of which was uncollected and transferred to Mrs. Warten in the sale to her at a considerable discount. Warten in his testimony says:

Q. That was for goods sold on credit by Schoolfield, Hanauer & Company while they were carrying on that business?

A. Yes sir. They sold these goods to these parties on credit. Parties had purchased to be paid, maybe, in 10 or 15 days.

Q. What is the aggregate amount sold?

A. $1,729.83.

Q. On what time was it sold?

A. Some of it for 10, 20 and 30 days and some of it for a year.

Q. What amount of it was sold for a year?

A. They sold to Hill and Legg $728.88 worth.

Q. Was that Major Legg that was here the other day?

A. Yes, sir. Hill & Legg are merchants at Athens.

Q. When were they to pay the $728.88?

A. Mr. Miller said to give them to December or January.

Q. You gave them untill January.

A. He told me to sell it out to them. Record, p. 176.

The following is a list of accounts for goods sold on credit whilst the store was run in the name of the claimants, as shown by bill of sale to Mrs. Warten:

"J. R. Hoffman, $8.90; Morgan F. McGavock, $37.16; D. T. Phillips, $7.10; James E. Horton, $20; J. W. Williams & Hand, $320.31; Gabe Mason, $60.32; Henry Williams. $49.15; Mrs. Marie Fredericks, $24.09; Moses Harris, $47.75; C. L. Sherrill, $24.33; Lon Harris, $19; N. C. Easter, 54.04; Limestone County, $55.50; R. B. Mason, $1.40; Birmingham Mercantile Company, $91.85; Decatur Mercantile Company, $117.91; N. F. Westmoreland, $1.37; Norreman & Burkey, $5.75; Hill & Legg, $728.88; W. J. Hill, $18,65; Jack McWilliams, $3.25; W. N. Reed, $3.55, Mrs. Ossie Rutland, $7.51; T. K. Hewlett, $4.80; Mrs. Lula Donevent, $ .50; S. M. Clay, $ .53; Sam Roseman, $3.75; James Sandifer, $1.00; Oscar Newby, $ .75; Austin Cain, $ .50; P. Peacher, $7.15; J. H. Raney, $1.00; A. D. Anderson, $4.35; F. H. Ogelsby, $3.50; Ira Davenport, $2.70; Chas. R. Getty, $1.50; W. R. Sykes, $6.40; W. J. Irvin, $ .17; W. B. Vaughn, $3.30; total $1,729,83." Record, p. 115.

Warten in his testimony says that these debts which were transferred to the claimants and the corporation, were secured by mortgage and were good. Record, p. 151. In the light of this

undisputed testimony as to the character and amount of these accounts and notes which Miller got for his firm and corporation from Warten, and considering the method pursued in carrying on this mercantile business in the name of the claimants, how ridiculous and absurd does the reason Miller gave for doing so appear!

The running of this store by the claimants was altogether inconsistent and irreconcilable with business methods, if the purpose was to secure collection of the debts transferred by Warten to the claimants and the corporation. The only rational, sensible view of this matter is, that if no arrangement or agreement had existed between Miller and Warten, a very different course would have been pursued with reference to this stock of goods. If the interests of the claimants alone had been consulted, the goods would have been sold at public or private sale for cash in short order, and the debts placed in the hands of a collector. The only hypothesis upon which the conduct of these people with reference to this stock of goods after the bill of sale from Warten to the claimants can be reconciled with business methods is upon the idea that the thing was being run in the interest and for the benefit, in part at least, of Warten. The accounts may have been a big thing, but evidently Warten was a more important factor in being cared for than the accounts.

The sale of all the property by the claimants to Warten's wife at a loss of $6,000, four months after they purchased it, the terms of sale being part cash (about one-half) and balance on credit until the latter part of the year, is on a line with the evident purpose of everything that was done in conncection with the store by the claimants, that is, that Warten was to be taken care of and that he was to get the property back. Warten's testimony in this case was absolutely essential to the claim of the claimants. He understood this and evidently used it for all it was worth. This we contend is shown by the price and terms upon which the property was transferred to Mrs. Warten. For instance, the claims which the corporation got for its debt against Warten amounted to ~~about the face of the indebtedness~~ some $3,000. These claims Warten says were secured by mortgage and he considered them good and collectible. The corporation collected about $800 on them, leaving balance about $3,000, which Mrs. Warten got for $1,572, being about fifty cents on the dollar. Of this amount $750 was paid in cash, and notes of Mrs. Warten taken for the balance. Record, p. 114. The debts aggregating about $1,700, due the

claimants for goods sold on credit whilst the store was run by them, were transferred to Mrs. Warten for $1,227,43, of which Miller, Jr., in his testimony says, "$750 was paid in cash and balance on credit." Record, p. 116.

The real estate sold to claimants for $1,250 was sold by them to Mrs. Warten for $1,250 cash. Record, p. 116. And the stock of goods and accounts sold to claimants as follows: The Athens stock for $8,631.24, being ten per cent less than inventory; the Elkmont stock for $2,097,84, being twenty per cent less than inventory; and three notes for $1,585.57 their face value secured by mortgage: one on Chas. Getty for $1,384.94; one on Frank Petty for $186.76; and one on Sam Donevent for $13.87. Record, p. 198. The two stocks of goods aggregated $10,729.08, and the three notes $1,585.57. Miller, Jr., says in his testimony that no inventory was taken of the stock on hand at the time of the sale to Mrs. Warten.

"Q. What amount of stock did you have on hand when you left?

A. I had about $3,000 worth; I couldn't tell because I did not invoice it, and I did not know much about dry goods.

Q. Your business in principally groceries?

A. Yes, sir." Record, p. 112.

He says further that his sales were about $6,000 and his collections about $800. Record, p. 111. And that he replenished the stock by the purchase of $1,600 worth of new goods. Record, p. 117. The stock of goods on hand when the bill of sale to Mrs. Warten bears date, and the Petty, Getty, and Donevent notes, were sold to her for $3,500,—all on credit. Record, p. 113. Miller, Jr., says in the trade he valued the goods at $3,000 and the notes at $500. Record, p. 125. The notes, Warten says, were secured by mortgage and were good and collectible. Record, p. 125. After the sale to his wife and before the case was tried, which was in November, 1890, he had collected the whole of the Petty note. Record, p. 151. From this it appears that Mrs. Warten got $1,585.57 of good claims for her promise to pay $500, and if the Hill note was included, as Warten in his testimony says it was (Record, p. 176), then the amount would be increased $356. At the time of the bill of sale to Mrs. Warten, making the estimated value of the goods on hand at the price they cost the claimants and deducting $6,000 for goods sold by the

claimants, less the $1,600 used in replenishing the stock, the value of the goods which Mrs. Warten got for $3,000 on credit would be $6,329.08. Warten says in his testimony that the claims transferred by the claimants and the corporation to his wife, aggregating, inclusive of the Hill note above referred to, $6,391.57, were worth their face value. Record, p. 176. She got them for $3,299.43, of which about $1,250 was cash and balance she gave her notes for on time without security. To summarize briefly, Mrs. Warten got as follows:

Real estate, value,	$1,250.00
Stock of goods,	6,329.08
Claims,	6,391.57
Aggregating	$13,970.65,

for which she was to pay $7,500 as follows: Cash $3,200, and her notes for balance $4,300, payable at intervals during the latter part of the year. One of the most striking features of this remarkable transaction is, that of the cash $3,200 paid, $1,250 of it was applied to the payment of the entire purchase price of the real estate, and Mrs. Warten's notes with no security, either personal or otherwise, taken for the stock of goods and claims. The testimony shows that Mrs. Warten had no property and that her husband was the sole reliance for the payment of the notes, evidently her name being used to protect the property from his creditors. This of itself was such a fraud as would vitiate all these transactions and make this property liable to the attachment proceeding by the plaintiffs. Further: The title to this property having been transferred to the claimants under the circumstances shown by the testimony and then, within four months, being transferred by them to the defendant's wife, he, during the interval, virtually retaining possession and management of the property, it is, under such circumstances, the duty of the claimants to show the entire *bona fides* of the transaction between them and Warten in the trausfer of the title of the property from them to his wife. Will it satisfy the scrutiny of a court scanning such a transaction, for them to say this woman's husband paid us the cash, gave us his wife's notes for the balance, and we prove by him that he got the money used in making the cash payment from Hess, Henle & Co.? The law says in reply to this, why did you not prove by Hess, Henle & Co. that they let her have this money? There are suspicious circumstances connected with this transaction and therefore the duty devolved upon you

to prove by better evidence than Warten's statement where this money came from. The burden was upon you to show it by the testimony of the person who it is claimed furnished the money. This is the rule laid down expressly by the Supreme Court of Alabama in a case somewhat similar in facts involving this identical question.

"Here, then, are *indicia*, or badges of a fraudulent conveyance, and *bona fide* creditors have the right to require that these shall be explained, and all unfavorable presumptions arising from them repelled by evidence, *first*, that the conveyance is founded on an adequate, valuable consideration paid or secured to the grantor."

Crawford v. Kirksey, 55 Ala., 293.
Hubbard v. Allen, 59 Ala., 283.

In the absence of clear and convincing evidence of this fact, the right and equity of the creditor must prevail. The evidence of the fact lies within the knowledge of the grantee; and the fact was of such recent occurrence, there could be no difficulty in producing it. It is so easy for parties standing in the relation of grantor and ~~the~~ grantee to feign a consideration for the transfer of the property of the one to the other, and to fabricate the evidence of its payment, that the transaction cannot be sustained, unless it is shown that there was a real adequate consideration actually paid, and whatever there may be, not in the ordinary or usual course of such transacttons, should be fully explained."

Harrell v. Mitchell, 61 Ala., 270.

The claimants may say, in answer to this proposition, "We have shown that we have paid a valuable consideration for this property, and therefore the consideration of the sale to Mrs. Warten is of no consequence." The answer to this proposition is, that the circumstances attending the transfer of the property to the claimants and the possession and management of it until their transfer to Mrs. Warten, are of such a suspicious character as to devolve upon the claimants to show that no benefit was reserved to Warten in the transfer by him to them, and this subsequent transfer, under the circumstances of the case, by them to his wife is a circumstance of such unusual and suspicious character, and being part of the transaction the good faith of which is assailed here, the law imposes upon the claimants the duty of showing that this transfer by them to Mrs. Warten was not for a feigned consideration and part of a contrivance entered into between War

ten and these claimants to hinder, delay and defraud his creditors. In order to do this, they must show by the best evidence that Mrs. Warten did get the money from Hess, Henle & Company to make the cash payment. It is not sufficient for them to prove by Warten that she did. The plaintiffs, before the fact was devoloped on the trial of the case, knew nothing about this transaction between the claimants and Warten for his wife. In referring to the return of this property to Warten, we speak of it as the sale to Mrs. Warten simply by way of designating the matter referred to, at the same time we do not wish it understood that we consider she had anything to do with it. Her name was evidently used as a screen to protect the property from his creditors, especially the plaintiffs. Warten himself, in his testimony referring to this transaction by which the property was transferred to his wife, in speaking of the transfer, uses the personal pronoun "I" instead of "She." Record, p. 151.

The conduct of the claimants in regard to this stock of goods after the bill of sale to them by Warten, taken in connection with all the circumstances of the case, shows conclusively that there must have been some understanding between Warten and Miller, which was entered into and was, in fact, the inducement for the transaction. The facts of the case are without dispute or contradiction that Warten did derive very material and substantial benefit from the transaction, and no one, viewing all the circumstances of the case, could but believe that this was the inducement, the consideration, which moved Warten to make the bill of sale. These circumstances, undisputed and uncontradicted as they are, are too powerful to be overcome by the uncorroborated statement of the parties to the transaction. It is true that the testimony for the claimants is positive and direct, and that for the plaintiffs, circumstantial. But the only witnessess for the claimants are the parties to the transaction. They are interested. If they get their consent to perpetuate a fraud or legal wrong upon the rights of others, they will unhesitatingly sustain it by their oaths. On the other hand, these circumstances of suspicion and badges of fraud, being established by the testimony in the case, the question is, What is the legal inference or conclusion to be drawn from them, and are they reasonably susceptible of any other construction, or is any other conclusion reasonably deducible from them than that contended for by the plaintiffs? It may be said that the claimants have proven the existence of the debt, and that the

value of the property was not greatly disproportioned to the amount of the debt, and that the property was sold in payment of the debt. This may be so, concede that it is, and yet two important questions remain. First, Was the preference obtained by the claimants by "fair methods," and, second, Was there a benefit reserved to the debtor, either expressly, tacitly, or impliedly, as the consideration or the inducement, in whole or in part, for the bill of sale? If there was such benefit reserved, or if "unfair methods" were resorted to in obtaining the preference, this vitiates the transaction. Would Warten have done this thing—made this sale and turned over all this property to the claimants—but for an understanding between Miller and himself that the thing was to work out in the way it did, and was it not an unfair and undue advantage which the claimants took of the plaintiffs to obtain this preference after the extension of the indebtedness due to plaintiffs had been obtained from them by Warten on the faith and strength of the letter of the corporation of December 27, 1889, to the plaintiffs? If circumstances of suspicion and badges of fraud as potent and powerful as those in this case, are to be overturned and set aside by unsupported, unreasonable and uncorroborated testimony of interested parties, the creditor wronged by the fraudulent conduct of his debtor is powerless and helpless so far as the instrumentality afforded by the law for his protection and the redress of his grievance are concerned. Circumstantial evidence, his main and, in most cases, only weapon of attack, is nothing more than a shattered spear. Without further elaboration we confidently submit this feature of the case to the calm and deliberate judgment of the court, in the light of the principle of the law above quoted from 17 Wall., 543. In *Pleasants v. Fant*, 22 Wall. 121, it is said:

"It is the duty of a court in its relation to the jury to protect parties from unjust verdicts arising from ignorance of the rules of law and evidence, from impulse of passion or prejudice, or from any other violation of his lawful rights in the conduct of a trial. This is done by making plain to them the issues they are to try, by admitting only such evidence as is proper in these issues, and rejecting all else; by instructing them in the rules of law by which that evidence is to be examined and applied, and finally, when, necessary, by setting aside a verdict which is unsupported by evieence or contrary to law.

In the discharge of this duty it is the province of the court, either before or after the verdict, to decide whether the plaintiff

has given evidence sufficient to support or justify a verdict in his favor. Not whether on all the evidence the preponderating weight is in his favor, that is the business of the jury, but conceding to all the evidence offered the greatest probative force which according to the law of evidence it is fairly entitled to, is it suficient to justify a verdict? If it does not, then it is the duty of the court after a verdict to set it aside and grant a new trial. Must the court go through the idle ceremony in such a case of submitting to the jury the testimony on which the plaintiff relies, when it is clear to the judicial mind that if the jury should find a verdict in favor of plaintiff that verdict would be set aside and a new trial had? Such a proposition is absurd, and accordingly we hold the true principle to be, that if the court is satisfied that, conceding all the inferences which the jury could justifiably draw from the testimony, the evidence is insufficient to warrant a verdict for the plaintiff, the court should say so to the jury."

This is the rule of practice, as we understand, prescribed by this Court for the trial court in all cases, and the principle is especially applicable to the case of the plaintiff and the defendant. When a creditor shows facts that raise a strong presumption of fraud in a conveyance made by his debtor, the history of which is necessarily known to the debtor only, the burden of proof lies on him to explain it, his estate being involved.

Clements v. Moore, 6 Wall., 299.

It is proved without conflict and it is conceded that the debt of the plaintiffs was contracted prior to the transfer we are assailing. This fact appearing, the onus of proving that the transfer was not merely voluntary but founded on an adequate and valuable consideration is, consequently, by law cast on the claimants. "Whatever may have been the motives of the parties in its execution as to creditors whose rights were existing, these deeds and transfers must be regarded as merely voluntary, and they must be presumed to be fraudulent until the contrary is shown."

Hubbard v. Allen, 59 Ala., 296.

Judges are no longer required to submit a case to the jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such a character that would warrant the jury to proceed in finding a verdict in favor of the party introducing such evidence.

Commissioners, etc., vs. Clark, 94 U. S. 284.

On the trial of a statutory claim suit, and that is what this suit is, "the plaintiff must first make out a *prima facie* case of liability to his execution or attachment; and when he has done this, the *onus* is devolved on the claimant to establish a valid title in himself as against the plaintiff."

Foster v. Goodwin, 82 Ala., 384.

When transactions such as the one at bar are assailed as fraudulent "the material inquiries are directed to the existence and validity of the debts, the sufficiency of the consideration and the reservation of a benefit to the debtor." In a case such as the present the burden of proving the existence of these essentials is cast upon the claimant."

Moore, Marsh & Co. v. Penn & Co., 95 Ala., 203.

Hodges Bros. v. Coleman & Carroll, 76 Ala. 105.

"In the race of diligence the creditor who seeks to become preferred must do no more than, by fair methods, obtain payment of his own claim. If he go further and secure a benefit to the failing debtor, this taints the whole transaction."

Seamen v. Nolen, 68 Ala. 466.

Wait on Fraud. Conv., § 390,

Levy v. Williams, 79 Ala. 177.

If by the transaction the failing debtor secured to himself a paying employment which but for the sale he would not have had, this was a benefit reserved, which renders the transaction fraudulent.

Lukins v. Aud, 6 Wall. 78.

Harmon v. McRae, 91 Ala. 411

Page v. Francis, 97 Ala. 382.

Stephens v. Regeinstein, 89 Ala. 561.

If the court should disagree with us in the foregoing portion of our argument, and conclude that the testimony should have been submitted to the jury, then we say that the sufficiency of the circumstantial evidence was not properly presented to the jury, but, on the contrary, the manifest tendency of many of the special charges asked by claimants and given, was to create the impression upon the jury that evidence of a more positive and direct character was required. This was erroneous. Special charges

asked by claimants Nos. 1, 2, 3, 6½, 7, 8, 12, 13, 14 and 15 are objectionable for this reason.

Rea v. Missouri, 17 Wall. 543.

ASSIGNMENT OF ERROR NO. 1. RECORD, P. 299.

The acts, conduct and declarations of the grantor at or about the time of the making of the transaction assailed is a part of the *resgestae*, and admissible as evidence whether made or occurring in the presence of the grantee or not.

Masterson v. Phinizy, 56 Ala., 336.

Lincoln v. Chaflin, 7 Wall., 132.

Rea v. Missouri, 17 Wall., 532.

Jones v. Simpson, 116 U. S., 609.

2 Rice on Evidence, pp. 950, 960.

Great latitude is allowed in cases of this character because of their nature, character and essential difference from an inquiry in regard to the ordinary and usual business dealings or transactions between men.

Durr v. Jackson, 59 Ala., 203.

Jones v. Simpson, 116 U. S., 609.

2 Rice on Evidence, p. 953.

ASSIGNMENT OF ERROR NO. 2. RECORD P. 299.

This was an inquiry into the past history of Warten in the nature of a biographical sketch, too remote, and sought to be injected into the case to divert and distract the mind and attention of the jury from the real, substantial and sole issue of fact in the cause. It could not possibly have any bearing in a legal way upon the transaction assailed to show its *bona fides* and validity, and was calculated to engender in the minds of the jury a maudling and improper sentiment and feeling as to the early or youthful opportunities and precocity of the defendant, and thereby distract and perhaps improperly influence their minds in the consideration of the real issue in the case.

Blanchard v. Putnam, 8 Wall., 420.

Turner v. Fendall, 1 Cranch, 117.

Storm v. U. S., 94 U. S., 76.

ASSIGNMENT OF ERROR NO. 3. RECORD, P. 299.

This question was asked on cross-examination of this witness, because the examination in chief had assumed a field of investigation and inquiry covered by the question, and that, too, against the objection of the plaintiffs, as shown by Assignment of Error No. 2; besides, greater latitude is indulged in the cross examination of witnesses, and especially a witness concerned with the transaction inquired about as this one is. See a full discussion of the question of the scope and range of cross-examination in

1 Rice on Evidence, p. 585 *et seq.*

ASSIGNMENT OF ERROR NO. 4. RECORD, p. 299.

All this testimony about what occurred between Warten and the man he had in charge of his store at Elkmont was irrelevant and illegal, especially conversations between them; besides, the failure to get money from the Elkmont store with which to pay the notes given to the plaintiffs is no excuse or justification for the conduct of Warten of which the plaintiffs complain. If he was disappointed in his expectation, it was his legal and moral duty to inform the plaintiffs of the fact and relieve their minds of the feeling of security which his transaction with them in obtaining the extension necessarily engendered, before giving to the claimants an advantage and preference in the payment of their debt, especially as this extension had been obtained upon the faith of the letter of the claimants to the plaintiffs.

P. & T. R. R. Co. v. Stimpson, 14 Pet., 448.

Williams v. Hill, 19 How., 246.

Freeborn v. Smith, 2 Wall., 160.

Nudd v. Burrows, 91 U. S., 426.

ASSIGNMENT OF ERROR NO. 5. RECORD, p. 299.

This testimony partakes too much of the character given by the witness to the defendant, "fussy." It is "fuss and feathers," has nothing whatever to do with the issue of fact in the case, was calculated to distract the mind of the jury from the real issue, and should have been excluded. Suppose Warten was fussy and close, what aid would that characteristic of Warten's be to the jury in the solution of the question of fact submitted to them? Besides, we do not understand that testimony of this character as to the peculiar characteristics of the fraudulent grantor in matters of business is admissible.

Blanchard v. Putnam, 8 Wall., 420.

Turner v. Fendall, 1 Cranch, 117.

Storm v. U. S., 94 U. S., 76.

ASSIGNMENTS OF ERROR NOS. 6 AND 7. REC., pp. 299-300.

This testimony as to conversations between Warten, Schoolfield, and Miller at or about the time the letter by the corporation to the plaintiffs of date December 27, 1889, was writen, is clearly inadmissible for any purpose. There is no proof that these conversations were communicated to the plaintiffs by Warten, or that he had any authority from them to do or say anything else except deliver the letter. In examination as a witness by counsel for claimants on this point he is asked:

"Q. Did you have any message to bear outside of that?" (Referring to the letter.)

"A. No."

The letter is written evidence and is to be interpreted and construed by the court, and not by the jury, in connection with testimony in regard to conversations occurring at the time it was written, uncommunicated to the plaintiffs. The plaintiffs had no right to consider anything else in connection with the letter as explanatory of it so far as the claimants and the corporation were concerned. The letter on the trial was to be interpreted and construed by the court, and not the jury, consequently this testimony was inadmissible.

P. & T. R. R. Co. v. Stimpson, 14 Pet., 448.

Williams v. Hill, 19 How., 246.

Freeborn v. Smith, 2 Wall., 160.

Nudd v. Burrows, 91 U. S., 426

ASSIGNMENTS OF ERROR NOS. 8 AND 9. RECORD, p. 300.

The questions to the witness Sykes upon a hypothetical case not shown by the testimony to be true, were illegal and improper.

1 Rice on Evidence, pp. 356, 358.

ASSIGNMENTS OF ERROR NOS. 10, 11 AND 12. REC., p. 300.

The testimony of the two witnesses, Weir and Dunham, was important as showing Warten's conduct and declarations shortly after the bill of sale of the stock of goods and transfer of the

accounts and notes and mortgages securing them to the claimants, the corporation, and Hess, Henle & Co. By the witness Weir it is shown that he was owing Warten, and Warten collected of him, February 10, 1890, twenty dollars on this indebtedness and signed the receipt Hess, Henle & Co., per Warten, Agent. Subsequently, it is shown by this witness that he paid to Warten $68.80, the balance of his indebtedness to him, and Warten had McGavock to write on the mortgage "Settled in full. Hess, Henle & Co., per McGavock, Agent." Warten received the money. In this connection it was proposed to prove by this witness that about this time he had conversations with Warten about furnishing him for the year, and what Warten said. The court would not permit this proof. So in reference to the witness Dunham, the same character of proof was proposed to be made by him. It was proposed to be proved by him that he was owing Warten a debt secured by mortgages on mules. He let Warten have the mules in payment of the debt, and they were a part of the mules Warten let the claimants have. Afterwards witness received a note from the Louisville Bank that this same claim was transferred to it. On the objection of the claimants the court refused to allow the plaintiffs to introduce this testimony. At the same time, the court allowed Warten to testify about a transaction he had about the same time with a Mr. Williams and the conversation he had with Williams at the time. This is reversing the rule of evidence as we understand. Plaintiffs have the right to introduce evidence of this character as to the conduct and declarations of Warten to impeach the transaction, but claimants would have no right to prove his declarations and conduct. The court will observe from reading the testimony of the witnesses, Weir and Dunham, that it is important as tending to show the fraudulent character of Warten's conduct with regard to his property at or about the time of the occurrence of the transactions here assailed. The rulings of the trial court on the exceptions here taken were, in effect, a denial of this right. This ruling was prejudical to the plaintiffs' case, not only because the evidence was clearly admissible, but because the court had permitted evidence of the same character by other witnesses in regard to similar transactions, and such inconsistent rulings of the court were calculated to weaken and impair the weight the jury might otherwise have given the evidence that was admitted.

Rea vs. Missouri, 17 Wall., 532.

Jones vs. Simpson, 116 U. S. 609.

Bank vs. N. E. Bank, 6 How., 212.

ASSIGNMENT OF ERROR NOS. 13, 24, 29, 31, AND 35.
RECORD, p. 301, 304, AND 305

It is conceded that under the construction given by the Supreme Court of Alabama since this case was tried in the Circuit Court, the statute law of Alabama did not prohibit or prevent a preference by a debtor of one creditor if there was a sale of property to him by the debtor at a fair price in payment of an existing debt and no benefit reserved to the debtor, although he may have contemplated and intended at the time a general assignment of all his property for the payment equally of all his creditors and shortly afterwards carried this intention into execution by executing the general assignment. At the same time, the Supreme Court say that the preference must be obtained by "fair methods," that no undue or unfair advantage must be given to, or taken by, the creditor preferred. And when there are facts in the case, as those at bar, tending to show that unfair methods were resorted to, and that an undue and unfair advantage was taken by, and given to, the creditor preferred, then, we say, the court errs in not coupling this qualifying clause to its general charge. This is the error complained of here in regard to the portion of the general charge excepted to.

City Bank v. Jeffries, 73 Ala., 183.

3 Am. & Eng. Enc. of Law, p. 398, §13, and cases cited in note.

Separate exception is also reserved to another portion of the general charge. This exception is embraced in Assignment of Error No. 13. Record, p. 302. The objection is, that there is no evidence or testimony in the cause tending to show a state of facts which would justify or authorize this instruction; consequently, it is abstract, assumes an hypothesis unwarranted by the testimony, and is misleading. There is absolutely no evidence in this case which would, upon the most strained and forced construction, justify the conclusion that Bamberger, Bloom & Company intended by granting the extension to Warten "thereby to get an advantage over Schoolfield, Hanauer & Company." There was nothing secret, hidden, or concealed in the transaction, no advantage or preference was obtained either by way of security or otherwise, and the plaintiffs had every reason to suppose and believe that the extension they granted, and its terms, would be im-

mediately communicated to the claimants, and this, in fact, was done. Miller met Warten at Athens immediately upon the return of the former from Louisville, and Warten says he told him what he had done. The Court says "it is so claimed;" that is, that the plaintiffs sought an undue and unfair advantage, by unfair methods of the claimants in giving the extension to Warten. To show the utter absurdity of this claim, it is only necessary to consider the character and the condition of plaintiffs' debt at the time of the transaction between them and Warten, and what was done. They had a debt of about $6,500 which was past due, and they granted an extension and renewal of it, payable along at intervals during the year. For this extension and renewal they got no security whatever—nothing but the note of the debtor. This extension placed them in no better position in any regard than they were before. The only person that could be benefitted by it was Warten. The suggestion that when they gave the extension, they knew it was not the extension contemplated by the letter of December 27 is without testimony to support it. As we have already shown, these plaintiffs received no message or other communication from these claimants except the letter, and to say they knew that the extension they granted was not the character of extension contemplated by the letter, is not the proper interpretation and construction of the letter. Being a written document, the court should have construed it and told the jury what it meant and its legal effect. Even if the letter is susceptible of the construction here contended for, under the circumstances how could it be claimed that the failure or refusal of the plaintiffs to grant the extension in full as contemplated was an effort on the part of the plaintiffs to obtain an undue advantage of the claimants? Outside of the foregoing, and considering the charge itself as an abstract proposition, it is erroneous because it does not show that any undue advantage, such as the law condemns, was sought to be obtained by the plaintiffs over the claimants, admitting there is evidence tending to show the facts upon which the legal conclusion stated in the latter part of the charge is based. This for the reason that even if the extension which was granted is not the extension contemplated by the letter, there is no suggestion of any concealment about it; the claimants it is understood would be informed about it immediately, and they were so informed. Being so, they had a right to say whether the extension was acceptable to them or not, and if it was, nobody had any right to complain; if it was not, all they had to

do was to say so. The advantage by one creditor over another which the law condemns is an undue aud unfair advantage, an advantage obtained by unfair methods, such as concealment, deceit, etc. The charge makes any advantage, whether fair and open, or unfair and concealed, to be condemned by the law. For the error alone of giving this charge, so radically wrong, both in its hypothesis of the facts and its statement of the law, this case should be reversed. It is entirely inconsistent with the special charges Nos. 4 and 5, Record, pp. 296–97, asked by the plaintiffs and which the judge at the conclusion of the bill of exceptions says were given. Record, p. 299.

11 Am. & Eng. Enc. of Law, p. 248, and note 4.

105 U. S., 353; 11 Wall., 391.

15 Wall., 401; 16 Wall., 378.

93 U. S., 291; 99 U. S., 676.

Etting v. Bank of U. S, 11 Wheaton, 59.

2 Black, 418–429; 3 Wall., 175, 194–5.

1 Black, 140; 2 How., 457.

12 Peters, 84; 1 Wall., 637, 643–4.

Ayers v. Watson, 113 U. S., 594, 608–9.

Edwards v. Darby, 12 Wheat., 206.

3 Am. & Eng. Enc. of Law, pp. 396–398.

ASSIGNMENTS OF ERROR NOS. 14 AND 15. RECORD, P. 302.

The objection to special charge No. 1 given at the request of the claimant is, that it does not state correctly the law on the subject of fraud. We do not understand that the law requires "that the jury must be satisfied from all the evidence that the claimants committed a fraud on the creditors of Warten, and unless such fraud is shown the verdict of the jury must be for the claimants." The fraud may be committed by Warten, and if the claimants have knowledge of it, or information in regard to it, and with such knowledge or information become the voluntary beneficiaries of the fraud of the debtor thus committed, this is sufficient in law to vitiate the transaction. The objection to the charge as framed is, that it is calculated to mislead and be misunderstood by the jury. Although it may be technically correct to say

in such case that the creditor has committed a fraud, yet a jury may not understand it that way, and likely would not. In this connection, see the criticism of the court on a charge similarly objectionable in the case of Rea v. Missouri, 17 Wall., p. 543.

Another objection to this charge is, that its meaning would seem to be that the fraud must be committed against *all* the creditors, and that, therefore, a fraud against *one* would not be sufficient. This is not the law. It is sufficient if the fraud is alone against the creditor complaining. The error of the remark of the judge to the jury in giving the charge is that the fraud complained of was limited and restricted by this remark of the judge to some *secret benefit* reserved to Warten, when the fact is, this was not the only fraud complained of. The plaintiffs claimed that they were defrauded by reason of the fact that they were induced by the letter of December 27 and Warten's promises, to grant him an extension, and pending this extension an undue advantage was taken of them by Warten and the claimants, they having knowledge of the extension having been granted. This remark of the judge ignores this feature of the case althogether and limits the investigation by the jury as to the question of fraud to the single inquiry as to whether in the sale to claimants a secret benefit was reserved to Warten.

Clements v. Nicholson, 6 Wall., 299.

Perkins v. Lockwood, 100 Mass., 249.

3 Am. & Eng. Enc. of Law, p. 387, §5.

8 Am. & Eng. Enc. of Law, pp. 768-9.

ASSIGNMENTS OF ERROR NOS. 16, 18, 19, 20, 21, 22, 24, 25 AND 28. RECORD, PP. 302-04.

These charges are each and all objectionable for the reason stated above to the qualifying remark of the judge in giving special charge No. 1 asked by the claimants. It will be observed that every one of the special charges given at the request of claimants and which are here assigned for error, present the point of objection in a more positive and, therefore, more objectionable form. For instance, special charge No. 15, covered by Assignment No. 28, says: "The Court charges the jury in this case that the inquiry should be directed to the *bona fides* of the debt and the sufficiency of the consideration and a reservation of a benefit to the debtor. If the transaction is not assailable on some one of these

grounds, fraud otherwise has no room for operation." So in reference to special charge No. 6½, covered by Assignment of Error No. 21:

"Fraud is never presumed, but must be proved; and if the jury find from the evidence that the claimants, Schoolfield, Hanauer & Company, purchased the stock of goods in controversy from Henry Warten in payment of an honest antecedent debt due to them from him at a fair and reasonable price, and Warten reserved no benefit or interest, the verdict of the jury should be for the claimants, Schoolfield, Hanauer & Company, notwithstanding Warten might have had a fraudulent intent. In such cases the fraudulent intent is not material."

These instructions in the most positive and unequivocal language limit and restrict the inquiry of the jury to the investigation of the existence of the debt, the value of the goods, and the reservation of a benefit by Warten, whereas the scope of the inquiry according to the evidence and law of the case should also have embraced the additional proposition as to whether the preference given to the claimants by the transaction was obtained by fair methods, or was undue advantage taken by them of the plaintiffs. It was manifestly erroneous to cut off this line of attack upon the transaction in this manner. To each one of these charges to have made them unobjectionable should have been added this proviso:

"Provided no undue or unfair advantage, such as the law condemns, was taken of the plantiffs by the claimants in securing a preference in the payment of the indebtedness to them by the purchase of the stock of goods." It cannot be said that the objection thus stated to these special charges given at request of claimants could have been obviated or cured by a request by plaintiffs to give a uqalifying charge embodying the proviso above suggested. In the instruction by the court to the jury as to the law of the case any special charge given at the instance of either party must contain in and of itself a correct legal premise; otherwise, the effect manifestly would be to confuse and bewilder the jury by requiring of them, unskilled in such matters, to critically examine each special charge in connection with all the instructions, general and special, to determine whether the one limits or qualifies or restricts the operation, force, or meaning of the others, and if so, to what extent. Such duty it would be a perversion of justice, and likely defeat the correct administration of the law to devolve upon the untrained and uneducated mind of the juror in such matters.

City Bank v. Jeffries, 73 Ala., 183.

Campbell v. Hopkins, 87 Ala., 184. Bank -v- Duggy Co, 100 Ala, 626.

Bank of Metropolis v. N. E. Bank, 6 How., 212.

Pennock v. Dialogue, 2 Peters, 1.

Greenleaf v. Birth, 9 Peters, 292.

11 Am. & Eng. Enc. of Law, p. 249, §4c.

3 Am. & Eng. Enc. of Law, pp. 386–7.

ASSIGNMENTS OF ERROR NOS. 17 AND 22. RECORD, pp 302–03.

These assignments of error are upon the question of the burden of proof. The objection to them is, that they ignore the rule of evidence as to the presumption of law which arises from proof of circumstances of suspicion and badges of fraud such as are shown to exist in this case. The rule in Alabama is this: That when a transaction such as the one in the case at bar between debtor and creditor is assailed for fraud by another creditor whose debt is shown to have been in existence at the time the transaction assailed was entered into, the burden of proof is upon the creditor preferred to prove the validity and amount of his debt, the value of the property, and that a fair and reasonable price was paid for it: and when, as in this case, strong aud undisputed circumstances of suspicion and badges of fraud exist, then the presumption of fraud arising legally from these circumstances, the law imposes the burden upon the creditor preferred of explaining. We contend that these charges as to the burden of proof do not state the law correctly in its application to the facts of this case.

Moore v. Penn, 95 Ala., 204.

Roswald v. Hobbie, 85 Ala., 73.

Pollack v. Searcy, 84 Ala., 259.

Smith v. Collins, 94 Ala., 394.

Chipman v. Glennon, 98 Ala., 263.

ASSIGNMENTS OF ERROR NOS. 23, 26 AND 27. RECORD, pp. 303–04.

The objection to these charges is, that they single out one of the strongest badges of fraud in the case and seek to weaken, impair, or destroy its force and weight as evidence by argumentative

deduction, the partial effect of which is to eliminate from the consideration of the jury in the determination of the question of fraud this circumstance or badge of fraud. That this is the effect is plain from the reading of the charges. For instance, one of them reads: "If the jury find from the evidence in this case, under the instructions given by the court, that the sale by Henry Warten to Schoolfield, Hanauer & Company is valid, then Schoolfield, Hanauer & Company had the legal right to give the stock of goods to Mrs. Warten, or sell the same to her on such terms as they desired." This is special charge No. 8 asked by claimants. Special charge No. 14 asked by claimants is similarly objectionable, and, in addition, concludes as follows: "*Such circumstance is not of itself fraudulent.*" This single sentence presents, in a more pointed and forcible manner than we could by argument, the strength of our objection. Of what possible practical good could the declaration by the court to the jury be, so far as a correct determination of the questions of fact submitted to them are concerned, by telling them if the sale is valid, then the claimants had the right to give Mrs. Warten the property? When the question of the validity of the sale is determined, that terminates the inquiry so far as the jury is concerned. But from this charge, it would seem that the validity of the sale to the claimants was to be first determined without considering in that connection the subsequent sale by them to Mrs. Warten, and if the jury determined that the first was valid, the other would be likewise.

Ayers v. Watson, 113 U. S., 594.

Edwards v. Durby, 12 Wheat., 206.

ASSIGNMENTS OF ERROR NOS. 33, 34 AND 36.

The Constitution of Alabama provides that "No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein; and such corporation may be sued in any county where it does business by service of process upon an agent anywhere in this State."

Const. of Ala., 1876, Art. XIV, §4.

Code of Ala., 1886, p. 47.

The General Assembly of Alabama passed an Act, approved February 28, 1887, "to give force and effect" to this constitutional provision, whereby practical operation and effect is given to it, and it is expressly made unlawful for a foreign corporation to

engage in or transact any business in Alabama without first complying with the law, and a penalty is imposed for its violation upon all persons acting as agents for such corporation so violating the law, and also upon the corporation itself, the penalty imposed upon the corporation being the sum of one thousand dollars for each offense, to be paid to the State.

Acts of Ala., 1886–87, pp. 102–104.

The Supreme Court of Alabama have construed this provision of the Constitution, and also this Act giving it force and effect, and it has been held that it is a legitimate exercise of the police power of the State, is not in conflict with any Act of Congress, nor violative of any provision of the Federal Constitution.

Am. U. Tel. Co. vs. W. U. Tel. Co., 67 Ala., 26.

"When conditions on the exercise of business, are imposed in a statute for the maintenance of public order, or the protection of parties, or on grounds of public policy, the contracts of such persons in violation of the statute are void."

Dudley vs. Collier & Pinckard, 87 Ala. 434.

Nelms vs. Mort. Co., 92 Ala., 757.

To evade the effect of this law of Alabama making void the contracts of foreign corporations that have not complied with the law, evidently this indebtedness of $2,500 was transferred from the account of the corporation to that of the firm. It is an elementary principle that that cannot be done indirectly which is prohibited from being done directly. It may be said that there is no evidence that this debt for $2,500 is not *bona fide* and was not actually due when this transaction occurred, and that therefore this defense in regard to it is at most merely technical. In reply to this suggestion we say, that the entire defense of the claimants is technical, and based upon a principle of the common law authorizing the preference by the insolvent debtor of one of his creditors, and which, because of its inequity and injustice, has been abrogated by statute in most of the States, including Alabama, the abrogating Act having been passed since this transaction occurred. So it does not lay in the mouth of the claimants to set up any such defense as this to these assignments of error.

These assignments of error, each of them, contain correct propositions of law. There is testimony in the case, as shown by the bill of exceptions, tending to establish as matter of fact the facts upon which these propositions of law depend, and as a consequence it was error not to have given them.

MILTON HUMES,
For Plaintiffs in Error.

Supreme Court, U. S.
FILED.
APR 11 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 296.

BAMBERGER, BLOOM & COMPANY, PLAINTIFFS IN ERROR,

vs.

W. W. SCHOOLFIELD ET AL.

BRIEF FOR THE DEFENDANTS IN ERROR.

F. P. POSTON AND
LAWRENCE COOPER,
Attorneys for Defendants in Error.

(14,854.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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BRIEF FOR DEFENDANTS IN ERROR.

THE FACTS.

Essential to the proper consideration of the assignments of error we thus briefly state, no brief on behalf of plaintiffs in error having been furnished us:

Henry Warten, the common debtor of Bamberger, Bloom & Company and Schoolfield, Hanauer & Company, was engaged in the mercantile business in the town of Athens, Alabama, for several years prior to the 13th day of January, 1890. He became indebted to Bamberger, Bloom & Company, merchants, of Louisville, Ky., in the sum of

$6,646.77. He was also indebted to Schoolfield, Hanauer & Company, a mercantile copartnership doing business in the city of Memphis, Tenn., in the sum of $17,032.40, as per statement rendered January 9, 1890 (Record, p. 79). This sum was due by open account on the 22d day of May, 1889, when the account was closed by the execution of three several promissory notes, payable as follows, with interest: $5,000, November 14, 1889; $5,000, December 14, 1889, and $3,787.40, January 14, 1890. (Record, pp. 84 and 85.)

The said Warten became further indebted to said copartnership of Schoolfield, Hanauer & Company in the sum of $2,500 on the 10th day of June, 1889, and for this sum executed his promissory note, payable four months after date, to said copartnership. This item is also charged to said Warten on the account due to said partnership (Record, p. 79). These four notes, with interest to January 9, 1890, the date of said statement, aggregate $17,032.40.

On the 1st day of April, 1889, the corporation organized for the purpose of conducting a mercantile business and known as the Schoolfield-Hanauer Company commenced operations, succeeding the firm or copartnership of Schoolfield, Hanauer & Company. With this corporation Warten opened an account, commencing April 3, 1889, leaving due and unpaid to said corporation January 9, 1890, $3,882.53. In the month of December, 1889, Warten, finding himself embarrassed, visited Memphis for the purpose of obtaining an extension from the claimants, who were his chief creditors and in practical effect his bankers. The visit resulted in the procurement by Warten of the letter written December 27, 1889, signed "The Schoolfield-Hanauer Company,

per W. W. Schoolfield, president," addressed to Bamberger, Bloom & Company. (Record, p. 162.)

Warten went to Louisville and delivered in person this letter to Mr. Julius Bamberger at the office of Bamberger, Bloom & Company. No reply was sent to the claimants by Bamberger, Bloom & Company. Warten remained in Louisville three or four days, and finally wired claimant that Bamberger, Bloom & Company "want $3,000—nothing less." Warten on this visit made an arrangement with Bamberger, Bloom & Company by which he executed December 30, 1889, eight acceptances, $1,000 being payable January 15, 1890; $500 payable February 1, 1890; $500 payable February 15, 1890; $500 payable March 1, 1890, and $500 payable March 15, 1890, aggregating $3,000. The balance of the debt, except $216.49, was payable in the fall of 1890 (Record, p. —). The account for $216.49 remained unclosed. By Warten it is claimed that this omission was intentional on the part of Bamberger, Bloom & Company, and by Bamberger, Bloom & Company it is claimed to have been accidental.

Schoolfield, Hanauer & Company knew nothing of the arrangement between Warten and Bamberger, Bloom & Company, having never received any reply to their communication.

H. G. Miller, a member of the firm of Schoolfield, Hanauer & Company, went to Athens, reaching there on the 11th day of January, 1890. The stock of goods and wares at Athens and Elkmont, together with other property, was agreed to be sold that day in full payment and satisfaction of the debt due to Schoolfield, Hanauer & Company. Accordingly the bill of sale (Record, p. 26) was prepared and on the morning

of January 13, 1890, was executed, the notes of Warten surrendered, and receipts against all dues given to him (Record, p. 139) and possession of the Athens stock immediately taken by Schoolfield, Hanauer & Company.

Mr. H. G. Miller, the partner in the firm of Schoolfield, Hanauer & Company, then took the early morning train for Elkmont, where possession of the stock of goods was surrendered to him for his said firm. In the said debt so paid by the goods taken under said bill of sale there was included a note of $2,500, bearing date June 10, 1889, which had been discounted by Schoolfield, Hanauer & Company, at the request of said Henry Warten, and is covered by the statement rendered January 9, 1890 (Record, p. 79). This note was discounted for the sum of $2,414.59 and was placed to his credit with the Schoolfield-Hanauer Company, as appears from the statement bearing date November 5, 1889. (Record, p. 79.)

After his return from Elkmont the said Warten made a general assignment for the benefit of all of his creditors. (See Record, p. 143.) Schoolfield, Hanauer & Company continued in possession of the goods acquired under said bill of sale and in payment of their said debt, when Bamberger, Bloom & Company, on the 15th day of January, 1890, caused to be issued an attachment and had the same levied by the marshal on the said goods and wares as the property of said Warten. Schoolfield, Hanauer & Company executed a replevy bond, remaining in possession.

About three weeks after the sale Warten was employed as salesman in the Athens store by Schoolfield, Hanauer & Company. The employment was no part of the sale and purchase. H. G. Miller employed him after seeking legal

advice that it could be properly done under the laws of Alabama.

Warten was acquainted with the trade and had experience in the business and could materially aid and assist Schoolfield, Hanauer & Company in the disposition of the goods and the collection of the debts. The remnant of merchandise and other goods on hand June 10, 1890, were sold to Mattie A. Warten and her notes taken therefor. (Record, p. 152.)

THE LAW.

1. The proceeding in this cause is what is known in Alabama as the "trial of the right of property." The plaintiff sues out an attachment against his debtor and causes the writ to be levied on the property as the property of the defendant (debtor). A third person, who is known as the claimant, intervenes, making an affidavit that he has a just claim to the property and executing bond for the forthcoming of the property, if it be found liable therefor, when he has the right to retain the possession. Upon the return of the attachment by the officer executing it an issue is made up between the plaintiff and the claimant, the plaintiff alleging that the property claimed is the property of the defendant and is liable to its satisfaction.

Code of Alabama, 1886, secs. 3004–3017.

The issue in this cause is thus made up. Bamberger, Bloom & Company sued out an attachment against Henry Warten and caused the writ to be levied on the stock of goods sold by Warten to Schoolfield, Hanauer & Company. An affidavit and bond were made on behalf of Schoolfield,

Hanauer & Company when the issue was made up under the statute.

This procedure in its result finds Bamberger, Bloom & Company alleging that the property levied on is the property of Warten, notwithstanding the sale to and purchase by Schoolfield, Hanauer & Company. The effect is a charge that the sale and purchase is fraudulent against Bamberger, Bloom & Company, and the validity of this transaction, in the wide range of the testimony, was the question before the court. The plaintiffs failed to establish the alleged fraud.

It is very clear, under the laws of Alabama, that Warten had the right to prefer Schoolfield, Hanauer & Company over other creditors. The insolvency of Warten was wholly immaterial, and if Warten was actuated with a fraudulent intent as to the plaintiffs the claimants are not thereby affected.

The rule is stated by the supreme court of Alabama in the case of Moog *vs.* Farley, 79 Ala., 246 (254):

"As growing out of the right of a debtor to prefer his creditors, we have held in several late cases that an absolute sale of his property by a debtor, though insolvent, to a creditor in payment of an antecedent debt honestly due, the amount of the indebtedness being commensurate with the value of the property and no benefit reserved to the debtor, will be maintained, though the debtor may have been moved by a fraudulent intent, and provided the creditor does no more than is necessary to procure the payment of his debt. In such case the creditor's knowledge of the debtor's insolvency is immaterial. The inquiries are addressed to the honesty of the indebtedness, its amount as commensurate with the value of the property, and the reservation of a benefit to the debtor."

The inquiries we have are whether the transaction was fair, whether the debt was honest, whether the goods were taken at a fair valuation, whether a benefit was reserved by the debtor.

These questions were matters of fact submitted to the jury, and by the verdict the transaction was found to be free from the taint of fraud. The rule of law is stated in Hodges *vs.* Coleman, 76 Ala., 103 (115):

"Inquiry, not in the brief formula, 'Is this transaction fair and free from fraud?' but inquiry as to the consideration upon which the sale was rested. If in such inquiry, fairly and honestly conducted, the transaction appear to be fair, seem to rest upon a just and sufficient consideration, and reserve no benefit to the grantor other than what the law would secure to him, then he may purchase with safety, although the original transaction may be afterwards shown to be fraudulent. The law exacts of him honesty of purpose and reasonable diligence, not infallibility."

We submit that the evidence is irresistible that Schoolfield, Hanauer & Company did not participate in any fraudulent intent on the part of Warten, if any such intent he had; but it is not material whether they did in fact participate in any such fraudulent intent. The goods were taken in payment of an honest debt, at a fair and adequate price, and no interest was reserved by Warten.

"These concurrent facts absolutely rebut all inferences that might be drawn from attendant badges of fraud and impart validity to the conveyance as an allowable preference of the particular creditor."

The transaction is therefore invulnerable.

Hodges *vs.* Coleman, 76 Ala., 103.
Myer *vs.* Sulzbacher, 76 Ala., 120.
Levy *vs.* Williams, 79 Ala., 171.
Carter *vs.* Coleman, 82 Ala., 177.
Wood *vs.* Moore, 84 Ala., 253.
Carter *vs.* Coleman, 84 Ala., 256.
Dollins *vs.* Pollock, 89 Ala., 351.

The rule is effectively stated in Hornthall *vs.* Schonfeld, 79 Ala., 107:

"A sale of his property by an insolvent debtor at a fair and adequate price in absolute payment of an honest debt, without reserving any benefit whatever to himself, will be sustained by the courts as a valid exercise of his right of preference, although made with a fraudulent intent on his part, of which the purchasing creditor was cognizant."

Also, Stewart *vs.* Dunham, 115 U. S., 61.
Tompkins *vs.* Wheeler, 16 Peters, 106.
Marbury *vs.* Brooks, 11 Wheaton, 78.
Clarke *vs.* White, 12 Peters, 178.
Burrill on Assignments, 6th ed., p. 163, sec. 124.

2. After the purchase by Schoolfield, Hanauer & Company Warten executed a deed of assignment for the benefit of his creditors, including the plaintiffs in this suit. It is clearly shown as a matter of fact that the assignment constituted no part of the sale. H. G. Miller, representing Schoolfield, Hanauer & Company, had no knowledge of the intention of Warten to execute the assignment when the trade was made for the sale of the goods. (See H. G. Miller's

evidence, Record, p. 201, and Warten's evidence, Record, p. 156.) It is, however, not material whether Miller had knowledge of the intention of Warten. He may have been fully cognizant of the purpose of Warten, and even had the right to purchase to avoid the assignment of the particular goods, the subject of the trade. This is manifest from the right of preference. If the purpose and intention of an insolvent to execute a general assignment could prevent a sale, the right to prefer would be destroyed. The mere intention, therefore, of an insolvent to execute an assignment would take away the right conferred on him by law.

But we submit as matter of law, demonstrated by the authority of the leading courts of the country, that an absolute sale in payment of an honest debt is not a part of a general assignment.

This principle is clearly enunciated in Heyer *vs.* Bromberg, 74 Ala., 524:

"A sale of his entire stock of goods by an embarrassed or insolvent debtor to one of his creditors in satisfaction of a debt admitted to be valid is not fraudulent as against other creditors when there is no secret trust or reservation of a benefit to the debtor, nor can such a conveyance be declared and enforced as a general assignment at the instance of other creditors."

It would not follow, however, that if the assignment and sale were parts of the same transaction the sale would be fraudulent under the laws of Alabama, as we think we will hereafter conclusively show.

The debt of Schoolfield, Hanauer & Company must be admitted to be valid. The testimony of William H. Burke,

Henry Warten, and H. G. Miller is positive on this point. No secret trust was reserved for Warten. The goods were taken at a fair valuation as then understood, but, as a result, a great loss was suffered by Schoolfield, Hanauer & Company. The employment of Warten was no part of the sale. His employment about three weeks thereafter was not fraudulent, but the proper thing to do. The sale to Mary A. Warten several months thereafter did not relate back to the sale to Schoolfield, Hanauer & Company and thereby impair the full vigor of the rights acquired. The law of Alabama recognizes the validity and propriety of such a sale:

"An absolute unconditional sale and conveyance of his property by a debtor, free from all reservation, in payment and satisfaction of antecedent debts cannot be declared a general assignment enuring to the benefit of all his creditors equally, although it may embrace all his property, and he is insolvent."

Otis *vs.* Maguire, 76 Ala., 295.
Danner *vs.* Brewer, 69 Ala., 191.

It is provided by section 1737 of the code of 1886—

"Every general assignment made by a debtor, by which a preference or priority of payment is given to one or more creditors over the remaining creditors of the grantor, shall be and enure to the benefit of all the creditors of the grantor equally; but this section shall not apply to or embrace mortgages given to secure a debt contracted contemporaneously with the execution of the mortgage and for the security of which the mortgage was given."

The cases of Otis *vs.* Maguire, *supra*, and Danner *vs.* Brewer, *supra*, were bills in equity seeking to make the instrument a general assignment. If the instrument is in effect a gen-

eral assignment, the instrument does not become fraudulent and void. Such is not the logic of the case; *e converso*, the instrument remains valid, but in a court of equity is held to enure equally to the benefit of all the creditors in precisely the same manner as if preferences are made in the instrument a court of equity, on proper application, will annul the preferences, but hold the instrument as a valid security for all alike. Can there be any doubt that if an attaching creditor in a court of law could tear down a sale because the effect is that it is a general assignment, the statute itself would be annulled? The statute destroys the right of preference in the instrument, yet the attaching creditor acquires it, and solely upon the reason given by the statute that the security enures to the benefit of all equally. This could not be the deduction, because the statute prohibits the very result sought by the attaching creditor.

In Danner *vs.* Brewer, 69 Ala., 191 (198), the rule of decision is laid down:

"It (the statute) does not annul as fraudulent a general assignment creating preferences or priorities not exacting conditions from creditors claiming or accepting its provisions. The assignment is preserved, and it is declared that it 'shall be and enure to the benefit of all the creditors of the grantor equally.' The preferences or priorities are blotted out, are annulled, and the assignment is read and effect given to it as if the statute were incorporated into it, as if instead of the preference of priority a security for the benefit of all creditors equally was expressed."

The preference contained in the instrument becomes void as to other creditors, but no one has ever supposed that the instrument was void for that reason. The instrument

Henry Warten, and H. G. Miller is positive on this point. No secret trust was reserved for Warten. The goods were taken at a fair valuation as then understood, but, as a result, a great loss was suffered by Schoolfield, Hanauer & Company. The employment of Warten was no part of the sale. His employment about three weeks thereafter was not fraudulent, but the proper thing to do. The sale to Mary A. Warten several months thereafter did not relate back to the sale to Schoolfield, Hanauer & Company and thereby impair the full vigor of the rights acquired. The law of Alabama recognizes the validity and propriety of such a sale:

"An absolute unconditional sale and conveyance of his property by a debtor, free from all reservation, in payment and satisfaction of antecedent debts cannot be declared a general assignment enuring to the benefit of all his creditors equally, although it may embrace all his property, and he is insolvent."

Otis *vs.* Maguire, 76 Ala., 295.
Danner *vs.* Brewer, 69 Ala., 191.

It is provided by section 1737 of the code of 1886—

"Every general assignment made by a debtor, by which a preference or priority of payment is given to one or more creditors over the remaining creditors of the grantor, shall be and enure to the benefit of all the creditors of the grantor equally; but this section shall not apply to or embrace mortgages given to secure a debt contracted contemporaneously with the execution of the mortgage and for the security of which the mortgage was given."

The cases of Otis *vs.* Maguire, *supra*, and Danner *vs.* Brewer, *supra*, were bills in equity seeking to make the instrument a general assignment. If the instrument is in effect a gen-

eral assignment, the instrument does not become fraudulent and void. Such is not the logic of the case; *e converso*, the instrument remains valid, but in a court of equity is held to enure equally to the benefit of all the creditors in precisely the same manner as if preferences are made in the instrument a court of equity, on proper application, will annul the preferences, but hold the instrument as a valid security for all alike. Can there be any doubt that if an attaching creditor in a court of law could tear down a sale because the effect is that it is a general assignment, the statute itself would be annulled? The statute destroys the right of preference in the instrument, yet the attaching creditor acquires it, and solely upon the reason given by the statute that the security enures to the benefit of all equally. This could not be the deduction, because the statute prohibits the very result sought by the attaching creditor.

In Danner *vs.* Brewer, 69 Ala., 191 (198), the rule of decision is laid down:

"It (the statute) does not annul as fraudulent a general assignment creating preferences or priorities not exacting conditions from creditors claiming or accepting its provisions. The assignment is preserved, and it is declared that it 'shall be and enure to the benefit of all the creditors of the grantor equally.' The preferences or priorities are blotted out, are annulled, and the assignment is read and effect given to it as if the statute were incorporated into it, as if instead of the preference of priority a security for the benefit of all creditors equally was expressed."

The preference contained in the instrument becomes void as to other creditors, but no one has ever supposed that the instrument was void for that reason. The instrument

under such circumstances becomes a trust for all creditors, but only by a bill in equity can a trust be established. The decisions in Alabama are found in—

3 Brickell's Digest, p. 49, secs. 16, 18.

The purpose of the statute is the prohibition of a debtor making a transfer of substantially all of his property *as a security* for the payment of his debts from discriminating between his creditors.

3 Brickell's Dig., p. 49, sec. 16, and cases cited.

In the case at bar the sale was not as security for the payment of debts, but was an absolute payment of a debt. The sale, therefore, was not a general assignment, and is not within the purview or purpose of the statute.

3 Brickell's Dig., p. 50, sec. 29.
Harkins *vs.* Bailey, 48 Ala., 376.
Crawford *vs.* Kirksey, 55 Ala., 282.
Danner *vs.* Brewer, 69 Ala., 191.
Heyer *vs.* Bromberg, 74 Ala., 524.
Otis *vs.* Maguire, 76 Ala., 295.

If it were a correct principle that the proximity with which the sale and assignment were executed constituted the sale a part of the assignment, it would not assist the plaintiffs in the case at bar. The proceeding is not an attempt to declare the sale a part of the assignment for the benefit of all creditors of Warten, *but is simply a process of seizure for the benefit of plaintiffs.* A sale could only be declared a general assignment by bill in equity, and the decree would not be for the plaintiffs, but for all creditors ratably and in proportion to their debts.

In Crawford *vs.* Kirksey, 55 Ala., 282 (293), the court say:

"Second. When the sale is in payment of an antecedent debt, our statutes have not gone the length of declaring that an insolvent debtor, or one in failing circumstances, shall not give a preference in the payment of his debts. If there be no secret trust or benefit or reservation reserved to the grantor, an actual sale made by such debtor at a fair and reasonable price will be upheld, although it be known to both contracting parties that such sale will leave the debtor unable to pay his other debts. This is one of the inevitable consequences of allowing a failing debtor to give preferences. The fraud which vitiates a sale by an insolvent debtor to a preferred creditor is unlike that of a sale for a new consideration paid. It is an attack upon the sale itself as an actual transfer of the property and its title, or upon the sufficiency or *bona fides* of the consideration. Simulation, secret trust—these are the defects which usually avoid sales made or pretended to be made by a debtor in failing circumstances to a preferred creditor."

"If there be a real debt and real transfer of the title and use of property in its payment at a fair price and in good faith, pressing importunity on the part of the creditor to procure its execution will not avoid the deed, although the debtor be known to be insolvent and the known effect of the conveyance is to leave the debtor without property to pay his other debts. To hold otherwise would be to declare that the vigilant creditor who stipulates for security of his claim against a failing debtor loses his claim by attempting to save it.

"The fact, pending a contemplated assignment, a mortgage was executed in good faith to secure a pre-existing debt, which mortgage had long previously been promised by the debtor, does not show that the assignment was ex-

ecuted with the intention of hindering, delaying, and defrauding creditors nor does it render the assignment void."

Dodd *vs.* Hills, 21 Kansas, 707.

Burrill, Assignments, 6th ed., p. 167.

A failing debtor may prefer one creditor to the exclusion of others, and it is immaterial whether the preference be given by payment, conveyancing, mortgage, by delivery of goods, by confession of judgment, or by suffering an attachment.

Claflin *vs.* Sylvester, 99 Mo., 276 (12 S. W. Rep., 508).

Cason *vs.* Murray, 15 Mo., 378.

Burrill, Assignments, 6th ed., p. 168, sec. 126.

This subject is fully treated in an exhaustive note to—

Burrill, Assignments, 171, sec. 128, note.

A mortgage made in good faith by an insolvent covering all his property to secure a *bona fide* debt, although executed in *contemplation* of an assignment which follows on a succeeding day, is not carried into and made a part of the assignment, but will stand as a valid and enforceable lien, even where the mortgagor has knowledge of the contemplated assignment.

Burrill, 6th ed., p. 453.

Gilbert *vs.* McCorkle, 110 Ind., 215 (11 N. E. Rep., 296).

In Michigan it has been decided that where, in anticipation of an assignment, an insolvent firm secured certain creditors by chattel mortgage on the firm property, who ac-

cepted the mortgage in payment or security for the payment of just and valid debts without knowledge of such intended assignment, that such mortgage was not fraudulent as a preference, and that the mortgage creditor should be paid in full.

Sweetzer *vs.* Camp, 63 Mich., 13 (29 N. W. Rep., 506).
Root *vs.* Hart, 29 N. W. Rep., 29.

The supreme court of Iowa lays down the same doctrine.
In re Guyer, 29 N. W. Rep., 826.

A like doctrine is maintained by the supreme court of Minnesota.

In re Gazzett, 29 N. W. Rep., 347.

So we find the same rule announced by the supreme court of Wisconsin.

Messersmith *vs.* Devendorf, 11 N. W. Rep., 906.

The courts of New York, Pennsylvania, and Mississippi agree with us on this proposition.

Fuller *vs.* Lewis (N. Y.), 5 N. E., 437.
Lake Shore Banking Co. *vs.* Fuller (Pa.), 1 Atl. Rep., 731.
Richardson *vs.* Marqueze, 57 Miss., 80.
8 Am. & Eng. Ency., p. 768.

We may, therefore, reasonably conclude that we announce the current of authority, and that it is in accord with the law of Alabama, which must prevail in this case.

Schoolfield, Hanauer & Company had a debt of $17,000 against Warten, past due; Warten could not meet his

paper, was actually insolvent, and the life of his business was evidently drawing to a close. What was the right and duty of Schoolfield, Hanauer & Company in this emergency? Should they sleep on their rights or become reasonably vigilant? It is characteristically expressed in the language of the lamented Chief Justice Stone in the case of Crawford *vs.* Kirksey, 55 Ala., 282 (300):

"When a failing debtor pays or secures one or more creditors at the expense of others, it is human nature that the non-secured creditors should feel aggrieved. But this is one of the inevitable results of allowing a failing debtor who cannot meet all his liabilities to prefer whom he will pay. After a transaction is consummated, *ingenious counsel* can always point out objections to the manner of its doing. If done quietly and without witnesses, then the complaint is that it was secretly done. If unusual publicity or particularity characterize the transaction, then this is urged as a badge of fraud. We submit if this does not savor of the water test, which in former years was wont to be applied to those suspected of witchcraft. If they sank they were innocent, but then they incurred great hazard of losing their lives by drowning. If they swam they were adjudged witches and perished at the stake."

Upon the question of the construction and effect of a statute of a State regulating assignments for the benefit of creditors, the decisions of the highest court of the State are of controlling authority in this Court.

Chicago Bank *vs.* Kansas City Bank, 136 U. S., 223.
Peters *vs.* Bain, 133 U. S., 670.

The appellants insist that there are certain badges or indicia which create the presumption of a fraudulent intent.

These questions were all settled adversely to the appellants by the verdict of the jury.

They are as follows:

A. The employment of Henry A. Warten to assist in the sale and disposition of the goods.

B. The sale to Mattie A. Warten.

C. The letter suggesting an extension.

As to the employment of Warten as a clerk, we find nothing inconsistent with fair dealing. There was no reservation in the bill of sale looking to his employment; it was not then contemplated.

The business of the firm of Schoolfield, Hanauer & Company was being closed in Memphis, and the corporation the Schoolfield-Hanauer Company was engaged in business in the city of Memphis. Warten was thoroughly competent; knew the people; could save debts. Mr. Miller was a grocery merchant and cotton factor. Prudence demanded a man acquainted with the character of the trade. If the employment of Warten had been a part of the trade it would not for that reason have rendered the sale fraudulent.

Mr. Justice Gray quotes approvingly the language of the supreme court of Indiana in Wilcoxson *vs.* Annesley, 23 Ind., 295:

"Where, as in this case, the purchase was of a stock of goods in a store and an established trade existing it seems but reasonable that, at a fair salary, the grantor might be employed, for a time at least, to continue in charge of the business, and that circumstance will not in itself prove the transaction fraudulent."

Smith *vs.* Craft, 123 U. S., p. 436.

Burrill, Assignments, 6th ed., p. 471, sec. 343.

The employment of Warten is thus explained by Walter W. Miller, who remained in charge of the business (Record, p. 110). He says that Warten was employed "because he was very valuable. I did not know any of the people that owed us, and he was indispensable to hunt them up and bring them in to us and help collect for us. That was about the only reason; he knew the whole trade." Mr. H. G. Miller, the member of the firm of Schoolfield, Hanauer & Company, thus explains the employment of Warten (Record, pp. 202, 203):

"Q. After the bills of sale and the transfer were made on the morning of the 13th what interest did Henry Warten have in any of the property?

"A. He didn't have a bit.

"Q. Were there any agreements between you and him, either expressed or implied, that he was to be employed or have any interest in the property at any time?

"A. Not a bit. I would have been very foolish to have made a trade and then give part of it back.

"Q. How long after the trade before you took him back?

"A. I don't remember the day, sir. I went up to Athens two or three weeks after the trade to look after the stock and see how everything was going on, and I found out that Mr. McGavock was going to quit me and I was bound to have somebody there that knew the accounts and the stock. The accounts were a big thing with me. If it had not been for them I would have moved the stock of goods to Memphis, and while my son could attend to the business he didn't know anybody—didn't know a man that owed us—and I then employed Warten.

"Q. When was it you first approached him?

"A. Three or four weeks after the sale; I don't recollect the day.

"Q. Was anything said before that time between you and him about your employing him?

"A. Not a word; in fact I would not have employed him then if I had not consulted my lawyer and found that I could.

"Q. Did you consult a lawyer as to whether it was lawful and proper before you employed him?

"A. Yes, sir."

This employment of Warten was not only not an evidence of a fraudulent intent, but was essential to the vigilant preservation and collection of the property.

Tompkins *vs.* Wheeler, 16 Peters, 106.
Olney *vs.* Tanner, 10 Fed. Rep., 101.
Hitchcock *vs.* St. John, Hoffman Ch., 511.
Wilbur *vs.* Fradenburgh, 52 Barb., 476.
Murray *vs.* McNealy, 86 Ala., 234.

B. The sale to Mattie A. Warten. The business was continued under the management of Walter W. Miller until the 10th day of June, 1890, when it was sold to Mattie A. Warten. (See bills of sale, Record, pp. 110–115.) There can be no pretension under the evidence that this sale to Mrs. Warten was connected with the original sale by Warten to Schoolfield, Hanauer & Company.

On this proposition the law is well settled in Alabama.

"A debtor in failing circumstances may sell and convey his property at an adequate price to a *bona fide* creditor, even though the known effect of such sale and conveyance may be to delay or defeat his other creditors, and neither the fact that the conveyance embraces all of his property that is subject to levy and sale under legal process nor the fact that the grantee immediately afterward conveyed the

property by deed of gift to the debtor's wife, who was his daughter, nor these facts combined are sufficient to set aside the transaction in equity as fraudulent against the other creditors."

Young *vs.* Dumas, 39 Ala., 60.

C. The appellants contend that the letter of the Schoolfield-Hanauer Company to them was not sent in good faith, and therefore that it was fraudulent, giving them the right of attachment against Warten and the goods sold to Schoolfield, Hanauer & Company. The premise was found to be untrue by the jury, but if true we cannot see the logic of the supposed result.

The letter is as follows (Record, p. 162):

"MEMPHIS, TENN., *December* 27, 1889.

"Messrs. BAMBERGER, BLOOM & COMPANY,

"*Louisville, Ky.*

"DEAR SIRS: Our mutual friend and customer, Mr. Henry Warten, through, we believe, no fault of his own, but owing to disastrous failures of crops in his section, finds himself forced to ask for extension of his particular friends, and he recognizes you among that number and from whom he can ask that favor.

"Having confidence in his honor and integrity and business qualifications, we have agreed to give him extension, provided you will do so. He informs us that one of his creditors has agreed to give him extension and he will only ask it of three houses, viz., yours, ourselves, and the party who has agreed to it.

"Yours very truly,

"THE SCHOOLFIELD-HANAUER COMPANY,

"Per W. W. SCHOOLFIELD, *President.*"

It is apparent that this letter required an answer from plaintiffs. Schoolfield, Hanauer & Company "agreed to give him (Warten) extension, provided you will do so." Unless plaintiffs gave the extension there was no agreement on the part of Schoolfield, Hanauer & Company. Without a reply from plaintiffs how could Schoolfield, Hanauer & Company know that an extension would be given? The plaintiffs acquiring the information that Schoolfield, Hanauer & Company were willing to extend, and that he was held in high esteem as a business man, and learning, doubtless, from Warten the large debt he owed Schoolfield, Hanauer & Company, was it the intention of plaintiffs to furnish no reply and drift along, collecting their debt by degrees, and lull Schoolfield, Hanauer & Company into inaction?

This letter recognizes the inability of Warten to pay "owing to disastrous crops in his section." The evidence clearly discloses that reference was made to the cotton crop. Warten's business depended on the yield of the cotton crop; he bought and shipped largely. The plaintiffs must have so understood the letter. About one-half of the debt of plaintiffs was closed by short paper, and the balance until the next fall and winter. Why leap the entire summer months if not awaiting the planting and growth of another cotton crop, and, if for another cotton crop, why such short paper before the crop could be planted, much less grown, if they, the plaintiffs, were acting in good faith? This question was also submitted to the jury and was decided adversely to the plaintiffs. Julius Bamberger, a member of plaintiffs' firm and with whom Warten negotiated for the extension, states no reply was sent to Schoolfield, Hanauer & Company (Record, pp. 267, 268), and that he did not think

a reply necessary (Record, p. 269). No explanation is offered by the witness why Schoolfield, Hanauer & Company were not notified of their action.

Having no knowledge that their suggestion of an extension would be considered, Mr. H. G. Miller, of Schoolfield, Hanauer & Company, went to Athens, Ala., arriving there on the 11th day of January, 1890, having been summoned to that place by Henry Warten. Regarding their suggestion as unnoticed, Mr. Miller proceeded to secure his debt, if possible, but actually lost $6,000. (Record, p. 200.)

Did the plaintiffs, Bamberger, Bloom & Company, who were merchants of extensive business, intentionally fail to reply to the letter, and did they seek an advantage by taking short-time paper without disclosing their action to Schoolfield, Hanauer & Company? Without in the least animadverting upon the plaintiffs, we submit that their business experience taught them what they might expect as a result, and to this end the attention of the Court is directed to the case of City National Bank *vs.* Jeffries, 73 Ala., 183 (193, 194).

See also Clarke *vs.* White, 12 Peters, 178 (200.)

An offer of a bargain by one person to another imposes no obligation upon the former unless it is accepted by the latter according to the terms on which the offer was made. Any qualification of or departure from those terms invalidates the offer, unless the same be agreed to by the party who made it.

Eliason *vs.* Henshaw, 4 Wheat., 225.
Tilley *vs.* County of Cook, 103 U. S., 155.
Carter *vs.* Shorter, 57 Ala., 253.
Hart *vs.* Bray, 50 Ala., 446.

By the supreme court of Alabama, in the case of Martin *vs.* Black, 21 Ala., 721 (729), it is said:

"But this letter, in connection with the other proof, falls far short of showing a binding contract to pay the debt, for the rule unquestionably is that a mere offer to do an act or to enter into a contract cannot within itself create a binding obligation on the party making it. Before it can have the effect to create an obligation it must be accepted or assented to by the party to whom it was made, and this acceptance or assent must be made known *in a reasonable time to the party* making such offer. This proposition is so universally true that it is needless to refer to authorities to sustain it. Many of them, however, will be found collected in Chitty on Contracts, 7th Am. ed., by Parker, from page 6 to 16. The letter of Mr. Chappell *was never answered*, nor does it even appear that its terms were agreed to. If, then, it could be construed as containing terms sufficiently definite to create a contract (which I think is very questionable), still it can be considered in no other light than a mere offer, to which no reply was given, and therefore not a contract."

The case of Heyer Brothers *vs.* Bromberg Brothers, 74 Ala., 524, we submit is conclusive of the case at bar. The court (page 529) say:

"But let us consider the bill in its several aspects separately. First, that feature of the bill which claims a priority for the creditors who granted extension on the faith of the agreement signed by F. Bromberg. Now, the averment of the bill is that this offer and alleged contract of F. Bromberg to forbear the assertion of his claim against Bromberg Brothers until the other creditors should be paid was on the consideration and condition that 'the other creditors would grant the extension desired.' There is not an averment in the bill that any of the creditors except Heyer

Brothers did grant the extension desired. F. Bromberg's proposition, being only an offer on conditions, could not become a contract until the conditions were accepted and complied with. Partial acceptance was not enough. If the acceptance was nearly complete, and if F. Bromberg waived further compliance and consented to act on the acceptance as complete, that should have been averred, setting forth the extent to which it had been accepted and the waiver and acquiescence by F. Bromberg. The present bill fails to show that F. Bromberg made any binding agreement to abstain from the assertion of his claim."

3 Am. & En. Ency., p. 852.
National Bank *vs.* Hall, 101 U. S., 43 (49, 50).
Darlington *vs.* Foote, 16 Fed. Rep., 646.
Ortman *vs.* Weaver, 11 Fed. Rep., 358.

The parties must communicate to one another their common intention. A secret acceptance of a proposal cannot constitute an agreement.

Lawson's Contracts, sec. 8, p. 14.
Lawson's Contracts, sec. 13, p. 20.

The acceptance must be absolute and unconditional and exactly meeting the terms at all points and closing them just as they stand. There is no contract if there is a variance of any kind between the terms of the offer and the acceptance.

Lawson's Contracts, secs. 15 and 16.

If what is written is to be construed as a mere opening of negotiations, no acceptance can transmute it into a contract.

Bishop's Contracts, sec. 324.

Arguendo, if the contract for extension had been in all things complete (although we submit there was only an unanswered suggestion), no right was thus created in the plaintiffs to seize the goods and absolutely destroy the right of the claimants. The most of which plaintiffs could complain would be that the claimants had violated their contract and in consequence were responsible in damages, or it may be that a bill for specific performance would lie. Certainly the violation of the contract would not make the purchase by claimants fraudulent.

Several of the assignments of error are based on the theory that a portion of the debt of Schoolfield, Hanauer & Company was simulated.

An examination of the account (Record, p. 79) can leave no question as to the validity of the debt.

On May 22, 1889, Warten was indebted to the firm of Schoolfield, Hanauer & Company in the sum of $13,787.94, balance then due, with interest. This balance was that day closed by three notes, $5,000 payable November 14, 1889, $5,000 payable December 14, 1889, and $3,787.94 payable January 14, 1890. On June 10, 1889, Warten sent his note for $2,500, payable at four months, to Schoolfield, Hanauer & Company for discount. (See note, Record, p. 85.) This note is charged in the statement rendered January 9, 1890. These four (4) several notes, with accrued interest, aggregated January 9, 1890, $17,032.40. (See Record, p. 79.) For this consideration the bill of sale of January 13, 1890, was made (Record, p. 26). The item or note for $2,500 charged in this statement the plaintiffs assert is fictitious, feigned, simulated. Appellants do not claim that Warten did not owe this $2,500, but they assert that he owed it to the cor-

poration the Schoolfield-Hanauer Company, and not the firm of Schoolfield, Hanauer & Company.

Let us therefore inquire whether the note of $2,500 belonged to the firm. Can there be any difference, so far as appellants are concerned, to what account the item was charged? Was not that a matter entirely between the firm and the corporation?

We have seen that Warten owed the firm, including this item, $17,032.40. He also owed the corporation a balance, January 9, 1890, of $3,882.53. The aggregate indebtedness to the firm and corporation was therefore $20,914.93.

It was the purpose of Mr. H. G. Miller to secure this aggregate indebtedness. The firm debt was secured under the bill of sale (Record, p. 79), and the corporation debt by bill of sale (Record, p. —). The firm rightfully treated the $2,500 as their debt and sought to secure it as a firm debt. The debt was real, not a simulated demand created to "stuff" the volume of indebtedness. If the debt had been treated as an asset of the corporation the only effect or difference would have been to embrace in the bill of sale to the corporation a portion of the property embraced in the bill of sale to the firm. Warten would have paid the same amount of indebtedness and parted with the same amount of property—nothing more and nothing less. Therefore it is very clear that no creditor could have been injured by the debit of this item to any particular account. There was as much property remaining for the rest of the creditors as there would have been had the item been debited to the corporation against Warten.

The assignments of error indicate that this note was payable to the corporation the Schoolfield-Hanauer Company,

but, as matter of fact, it was payable to the firm of Schoolfield, Hanauer & Company. It reads as follows:

"$2,500. ATHENS, ALA., *June* 10, 1889.

"Four months after date I promise to pay to the order of Schoolfield, Hanauer & Company two thousand five hundred dollars, payable at the office of the Schoolfield-Hanauer Company, with interest from date.

"HENRY WARTEN."

In order to discount the note the first necessary thing to do was for the firm of Schoolfield, Hanauer & Company, the payees, to indorse it. Without such indorsement the banks could not discount it. Having indorsed it, the firm created their liability and thus Warten became their debtor.

Warten obtained the proceeds of the note, $2,414.59, and this amount was placed to his credit with the Schoolfield-Hanauer Company, who were then in effect his bankers (Record, p. 79). Warten then proceeded to draw against this deposit, paying the current bills of his business. (See statement, November 5, 1889, Record, p. 79.)

There was nothing, therefore, fictitious about the debt of $2,500. Warten received the proceeds and paid therefrom various creditors.

The proceeds of the note were properly placed to his credit with the corporation the Schoolfield-Hanauer Company, it being the live, going concern. The firm was out of business, except to wind up unsettled matters.

Warten thus states the transaction:

"Q. When you made your settlement, did you give any notes or pay any money?

"A. Yes; I had taken in my old notes the year previous and given new ones.

"Q. And on the next statement, January 9, it is not on that at all.

"A. Because it is on the statement of the others."

Record, pp. 180, 181.

In the various statements of the corporation this note of $2,500 is not carried over or included in the balance; rather the balance excludes the note. (Record, pp. 81, 82.)

Suppose the $2,500 note had been treated as a debt due to the corporation the Schoolfield-Hanauer Company, and property had been taken in payment by the corporation, the plaintiffs would have assailed that transaction for the same alleged infirmity. The "water test for witchcraft" would again confront us as applied in—

Crawford *vs.* Kirksey, 55 Ala., 300.

The Assignment of Errors—Specifically.

The errors alleged numbered one to twelve, both inclusive, are shown to be immaterial on the question at issue.

The acts and declarations of Warten, made out of the presence of the grantee, are not evidence against the latter.

Moses *vs.* Dunham, 71 Ala., 173.

It was permissible to show the business character of Warten as illustrating the reason of his employment.

Smith *vs.* Craft, 123 U. S., p. 436.

The inquiry of the witness W. H. Sykes is free from objection. The sale of the stock of goods to Schoolfield, Hanauer & Company was being attacked as fraudulent, and, among other matters, the value was before the jury. The

stock had been sold in bulk, and questions on this line were offered to verify the fair dealing of Schoolfield, Hanauer & Company.

The inquiry of witness Dunham was not material. It called for declarations of third persons not made in the presence of the grantees.

No. 13. That portion of the general charge excepted to has been considered in this brief at length. The charge of the court was in keeping with the authorities cited.

Hodges *vs.* Coleman, 76 Ala., 103.
Myer *vs.* Sulzbacker, 76 Ala., 120.
Levy *vs.* Williams, 70 Ala., 171.
Hornthall *vs.* Schonfeld, 79 Ala., 107.
Stewart *vs.* Dunham, 115 U. S., 61.
Tompkins *vs.* Wheeler, 16 Peters, 106.
Burrill on Assignments, 6th ed., pp. 167–171.

If Bamberger, Bloom & Company sought the advantage by taking short paper and failed to give notice to Schoolfield, Hanauer & Company it was a legitimate question before the jury, and they should not be heard to complain. If they attempted a fraud in law on Schoolfield, Hanauer & Company they should not be permitted to complain if they were defeated by a more vigilant creditor.

City National Bank *vs.* Jeffries, 73 Ala., 183.
Clarke *vs.* White, 12 Peters, 178.

Nos. 14 and 15. Charge No. 1, asked by claimants, asserts manifestly a correct legal proposition. The charge is one of fraud. If Schoolfield, Hanauer & Company com-

mitted no fraud, there is nothing in the case. Without such fraud on the part of Schoolfield, Hanauer & Company there could be no recovery on the part of plaintiffs.

No. 16. Charge No. 2, requested by claimants, needs no further argument. The proposition is discussed at length under subdivisions 1 and 2 of this brief, and the language is taken from the authorities cited.

No. 17. Charge No. 3, requested by claimants, is elementary law.

Hodges *vs.* Coleman, 76 Ala., 103.
Jones *vs.* Franklin, 81 Ala., 161.
Shahan *vs.* Herzberg, 73 Ala., 59.

No. 18. Charge No. 4, requested by claimants, is practically the same as No. 2 and the general charge of the court.

Nos. 19 and 20. Charges 5 and 6, requested by claimants, merely clothe in different language the proposition embraced in charge No. 4.

No. 21. Charge No. 6½, requested by claimants, is supported by numerous decisions of the supreme court of Alabama and is doubtless recognized everywhere.

3 Brick. Dig., p. 521, secs. 176–181.

Nos. 22 to 28. Charges 7 to 15 are based upon the principle discussed at length in subdivisions 1 and 2 of this brief.

Nos. 28 to 31. Charges Nos. 1, 2, 3, requested by the plaintiffs, are in conflict with the following cases and therefore cannot present a proper exposition of the law:

Otis *vs.* Maguire, 76 Ala., 295.
Danner *vs.* Brewer, 69 Ala., 191.
3 Brickell's Dig., p. 49, secs. 16 and 18.
Heyer *vs.* Bromberg, 74 Ala., 524.
Burrill's Assignments, 6th ed., p. 167.

No. 32. This assignment is an affirmative charge on the effect of the evidence. It should not have been given. Authorities *supra.*

Nos. 33 and 34. The charges requested by the plaintiffs under these assignments were properly refused. They were abstract. The note for $2,500 was not payable to the Schoolfield-Hanauer Company, but to the firm of Schoolfield, Hanauer & Company (Record, p. 85). There was absolutely no evidence before the jury that the note was taken from one account and placed to another. It was placed on the account of the copartnership, to whom it was payable. Sure, it was not fraudulent. However erroneous, if erroneous at all, it must have been fraudulently done before it can be characterized as simulated. The debt was real, existing, and therefore could not be simulated.

No. 35. The charge here requested has been discussed fully. It is practically the same as charges 1, 2, and 3 requested by plaintiffs.

No. 36. This charge assumes that the note was endorsed by the corporation the Schoolfield-Hanauer Company (Rec-

ord, p. 85). If the endorsement by the corporation made it the property of the corporation, so the endorsement by the firm made it the property of the firm. The note being payable to the firm, it must be that the firm advanced the money and placed it to his credit, where it would be subject to Warten's draft.

There is nothing in the laws of Alabama which prohibit dealings with a foreign corporation. The note was sent to Memphis, Tenn., for discount, and for this reason alone the law of Alabama would not govern its discount. The charge was also erroneous because it carried with it the statement that they, claimants, would thereby evade the law, which was misleading and untrue.

"A contract for the purchase of goods made between a citizen of Alabama and a Missouri corporation, whether made in Alabama or Missouri, is within the congressional power to regulate interstate commerce, and the corporation may maintain a suit on the contract in Alabama without alleging or showing a compliance with our constitutional and statutory provisions as to having a resident agent and known place of business."

Ware *vs.* Hamilton Brown Shoe Co., 92 Ala., 145.
Cook *vs.* Rome Brick Co., 98 Ala., 409.

Respectfully submitted.

F. P. Poston,
Lawrence Cooper,
Attorneys for Defendants in Error.